



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शुक्रवार, 7 जून, 2013 / 17 ज्येष्ठ, 1935

हिमाचल प्रदेश सरकार

लोक निर्माण विभाग

शुद्धि पत्र

शिमला-2, 6 जून, 2013

सं0पी0बी0डब्ल्यू0(बी0)एफ(5)67 / 2011.—इस विभाग द्वारा भू-अर्जन अधिनियम-1894 की धारा 4 के अन्तर्गत जारी समसंख्यक अधिसूचना दिनांक 18-03-2013 के अन्तर्गत गांव धरेच, तहसील ठियोग, जिला शिमला में धरेच-चटोग वाया मुण्डा सड़क के निर्माण हेतु अर्जित की जा रही है, में “खसरा न0 111/1” के स्थान पर “खसरा न0 111” तथा “रकवा तदादी 0-10-90 हैक्टयर” के स्थान पर “रकवा तदादी 0-19-90 हैक्टयर” पढ़ा जाए।

आदेश द्वारा,
हस्ताक्षरित /—
प्रधान सचिव (लोक निर्माण)।

लोक निर्माण विभाग

शुद्धि पत्र

शिमला-2, 6 जून, 2013

सं0पी0बी0डब्ल्यू0(बी0)एफ(5)14 / 2012.—इस विभाग द्वारा भू अर्जन अधिनियम 1894 की धारा 4 के अन्तर्गत जारी समसंख्यक अधिसूचना दिनांक 24-03-2013 (गांव मुबारिकपुर, तहसील अम्ब, जिला ऊना) के अधिक्रमण में पैरा न0 4 में “भू—अर्जन समाहर्ता, हिमाचल प्रदेश लोक निर्माण विभाग (म0 क्षेत्र) मण्डी के स्थान पर ”भू—अर्जन समाहर्ता हिमाचल प्रदेश लोक निर्माण विभाग (का0 क्षेत्र) कांगड़ा” तथा पृष्ठांकन क्रम संख्या 7 ”भू—अर्जन समाहर्ता, हिमाचल प्रदेश लोक निर्माण विभाग (म0 क्षेत्र) मण्डी के स्थान पर भू—अर्जन समाहर्ता हिमाचल प्रदेश लोक निर्माण विभाग (का0 क्षेत्र) कांगड़ा” पढ़ा जाए।

आदेश द्वारा,
हस्ताक्षरित/—
प्रधान सचिव (लोक निर्माण)।

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla-2, the 24th May, 2013*

No. Sharm (A) 7-1/2005 (Award)-part-file.—In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Shimla of the following cases on the website of Labour & Employment Department:—

Sr. No.	Case No.	Title of the Case	Date of Award
1.	325/01	Smt./Shri Baldev & Others V/s I&PH Solan	15-5-2013
2.	149/2007	Sh. Antu Yadav V/S Sidhartha Super Spining Mills Nalagarh.	15-5-2013
3.	151/2006	Sh. Kundan Lal V/s HRTC	16-5-2013
4.	29/2011	Sh. Mohima Chand V/s Collector of Forest	16-5-2013
5.	30/2011	Sh. Pawan Kuamr V/S -do-	16-5-2013
6.	50/2011	Sh. Sukh Ram V/S -do-	16-5-2013
7.	100/2011	Sh. Liyakat Ali V/s DFO Khalini	18-5-2013
8.	99/2013	Sh. Sher Singh V/s -do-	18-5-2013

By order,
Sd/-
Addl. Chief Secretary (Lab. & Emp.).

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 325 of 2001

Instituted on 26-12-2001

Decided on 15-5-2013

1. Baldev Singh S/o Shri Shiv Ram R/o Vilalge Bhag Salai, P.O Janedeghat, Tehsil Kandaghat, District Solan, HP.

2. Virender Singh S/o Shri Sewak Ram R/o Village Jadiyal, P.O Nagali via Chail, Tehsil Kandaghat, District Solan, HP. . . Petitioner.

VS

The Executive Engineer, HP Irrigation & Public Health Division, Saproon, District Solan, HP. . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner: Shri B Vashishtha, Advocate.

For respondent: Shri Jagdish Kanwar, Ld. DDA.

AWARD

The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the termination of Shri Baldev Singh S/o Shri Shiv Ram and Shri Virender Singh S/o Shri Sewak Ram daily wages beldar by the Executive Engineer I&PH Division, Solan, HP without any notice and without complying with section 25F/25N of the I.D Act, 1947 is legal and justified? If not to what back wages, seniority, service benefits and relief the concerned workmen are entitled to?”

2. Both the petitioners have filed joint claim petition stating that they were engaged by the respondent in September, 1992 and Feb., 1995 respectively and remained in the employment till 1-9-1999 when their services were wrongly and illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947. Both the petitioners stated that they have completed 240 days in the employment in a calendar year, therefore, they were entitled for the protection of section 25-F of Industrial Disputes Act, 1947. No notice was served upon them before terminating their services. Petitioners further stated that after their termination the respondent retained junior workmen and also recruited new workmen and thereby violated the provisions of section 25-G and 25-H of the Industrial Disputes Act, 1947. Consequently petitioners prayed to set aside their termination and to reinstate them with full back wages and consequential service benefits.

3. Respondent contested the claim petition by filing reply wherein preliminary objections as to jurisdiction, maintainability, abandonment of job by the petitioners and limitation were raised. On merits, respondent did not deny that the petitioners were engaged in October, 1992 and Feb., 1995 respectively and they worked in the department. However, respondent denied that both the petitioners were terminated. The respondent stated that the petitioner never completed 240 days of continuous service in a calendar year as required under law. It was also stated that no fresh workmen were recruited after both the petitioners abandoned the job. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioners filed rejoinder wherein they denied preliminary objection taken by the respondent in reply and further reasserted the facts already stated by them in claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of services of the petitioner by the respondent is violative of section 25-F/N of the Industrial Disputes Act, 1947? . OPP.
2. Whether this Court has no jurisdiction to adjudicate upon the dispute involved in the present reference? . OPR.
3. Whether the petition is barred by time? . OPR.
4. Whether the petitioners had abandoned the job on their own? . OPR.
5. Relief.

6. It is relevant to state that initially the award was passed by this Court on 11-7-2008 which was set aside by the Hon'ble High Court in CWP No. 1475/2008 dated 20-5-2007 and the case was remanded to this Court with the direction to give findings on issue no.4 stated hereinabove as to the abandonment of job by the petitioners. Therefore, this Court again decided the case vide award dated 6-7-2010 which was also set aside by the Hon'ble High Court in CWP No. 5884 of 2011-F and CWP No. 2924 of 2011-C dated 12-9-2012. Hon'ble High Court directed the respondent/State to place on record complete material for the just decision of this case. After receiving back the file from Hon'ble High Court on remand the case was registered against its old number and as per directions of Hon'ble High Court respondent produced in evidence the relevant record of the case. Opportunity was also afforded to the petitioner to file documentary evidence in order to rebut the documentary evidence filed by the respondent. Consequently, petitioners also filed on record documents.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid points are as under.

Issue No.1: No.

Issue No.2: No.

Issue No.3: No.

Issue No.4: No.

Relief: Reference answered accordingly in favour of petitioners and against the respondent per operative part of award.

Reasons for findings

Issue No.1:

9. In support of this issue both the petitioners stepped into the witness box as PW-1 & PW-2 and deposed that they worked continuously for 240 days in a calendar year. They tendered in evidence copies of mandays chart Ex. P-1 and Ex. P-2. To rebut the case of petitioners, respondent examined Shri Ashwani Sharma, JE IPH Sub Division Kandaghat who stated that the petitioners never completed 240 days in a calendar year.

10. From the careful perusal of Ex. P-1 and Ex. P-2 it is clear that petitioners have not completed 240 days in a calendar year from 1992 to 1999. In order to get the benefits of section

25-F of Industrial Disputes Act, 1947, petitioners were to prove that they have completed 240 days in preceding year from 1-9-1999. But there is no evidence to establish that in the preceding year from 1-9-1999 both the petitioners have completed 240 days. The petitioners did not produce any receipt of wages to show that they had worked for 240 days in a calendar year. They also did not examine any co-worker. Burden was heavily upon the petitioners to prove this issue and in the absence of specific evidence, petitioners have failed to discharge this burden. Since, the petitioners have failed to prove that they have worked for 240 days in preceding calendar year from 1-9-1999, then, they are not entitled to the protection of section 25-F of the Industrial Disputes Act, 1947. Since, the evidence were led by the petitioner to prove that they have worked continuously for 240 days in a calendar year which is requirement under section 25-F of Industrial Disputes Act, 1947. This plea of petitioners is sufficient that they have not pressed their claim under section 25-N of Industrial Disputes Act, 1947.

11. Accordingly, this issue is decided against the petitioners.

Issue No. 2 :

12. After due consideration, I am not in agreement with the plea raised by the respondent that this court has no jurisdiction. The petitioners have raised an industrial dispute by filing a demand notice and industrial dispute was accordingly referred by the appropriate government to this Court for adjudication. It is undisputed fact that both the petitioners were engaged by the respondent on daily wages basis. Therefore, I am of the opinion that this Court received a proper reference which can be legally adjudicated upon by this Court. Hence, issue no.2 is answered against the respondent.

Issue No. 3 :

13. I do not find any evidence on this issue on behalf of respondent. However, being legal issue I am of the opinion that the provision of limitation Act do not apply to the dispute under I.D Act as it was held by the Hon'ble Supreme Court in the matter of (1999) 6 SCC 82 that the provisions of Article 137 of limitation Act, 1963 are not applicable to the proceedings under the ID Act and the relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact. But in this case respondent has not led any evidence on this issue of limitation. Consequently, for the aforesaid reasons, it can be safely concluded that this petition is not time barred. Hence, this issue is decided against the respondent.

Issue No. 4 :

14. After hearing both the parties and going through the record carefully, I do not find specific evidence on record to show that petitioner have abandoned the job. Although, RW-1 Shri Ashwani Sharma, JE IPH Sub Division Kandaghat has stated that petitioner were not retrenched but they have left their job but at the same time he has admitted in his cross-examination that no notice was issued to the petitioners regarding their absence from duty. To my mind, if petitioner had not reported for duty *w.e.f.* 1-9-1999 then it was obligatory upon the respondent to issue notice to petitioners to resume the work but no such notice was issued to the petitioners. The evidence on record is revealing that muster rolls were issued for the month of September, 1999 and in subsequent month. That means the work was available with the respondent. In the absence of any specific evidence, I have no hesitation to hold that petitioners had not abandoned the job but in fact they were retrenched.

15. Now, we have to see whether the retrenchment of petitioners is sustainable under law. A per the directions of Hon'ble High Court it has to be seen whether the retrenchment of petitioners is in violation of section 25G & 25-H of the Industrial Disputes Act, 1947.

16. On behalf of respondent the documents Ex. RX to Ex. RX-19 were filed on record before this Court after the case was received back from Hon'ble High Court on remand. Ex. RX-12 and Ex. RX-13 are the muster rolls of both the petitioners Baldev Singh and Virender Singh which establish that they were engaged by the respondent in 1992 and 1995 respectively. Ex. RX-16 to Ex. RX-18 are the muster rolls of workmen namely Suresh Kumar, Rattan, Vijay and Medh Ram revealing that they were engaged by the respondent in 1997. That means all the said persons were engaged after the petitioners and these persons are junior to petitioners.

17. On behalf of petitioners copy of reply Ex. PA-2 was produced in evidence which was filed by the respondent before Hon'ble High Court in CWP No. 2924 of 2011. In said reply the respondent has admitted that S/Shri Medh Ram, Suresh Kumar, Joginder etc. were engaged in 1996-1997 and they were not engaged after the abandonment of work by the petitioners. As discussed hereinabove, it has been held that the petitioners never abandoned the work but they were in fact retrenched. In the aforesaid reply the respondent has also admitted that the aforesaid workers were engaged in 1996-1997 and they continuously worked with the respondent. This specific admission of the part of respondent established that after 1-9-1999 junior workmen to both the petitioners were retained by the respondent. Both the petitioners when stepped into the witness box as Pw-1 & PW-2 have also categorically deposed that the junior workmen to them are still continuing on the rolls of department after their retrenchment and to this effect there is no cross-examination. Since, the fact stated in examination-inchief by both the petitioners has not been specifically questioned in cross-examination by the respondent, hence, this fact goes to suggest that respondent has admitted that junior workmen to both the petitioners were retained in job after 1-9-1999 when both the petitioners were retrenched. Therefore, the retrenchment of petitioners is in violation of the provisions of section 25-G of the Industrial Disputes Act, 1947 which reads as under:

“Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

18. The aforesaid provision makes it obligatory on the part of employer to follow the principle of first come last go. In other words, the junior workman is to retrench first. But in this case juniors were retained whereas both the petitioners being senior were retrenched. Hence, termination of both the petitioners *w.e.f.* 1-9-1999 is against the provisions of section 25-G of Industrial Disputes Act, 1947 which is not sustainable under law. Hence, this issue is decided in favour of petitioners.

Relief :

For the reasons recorded hereinabove, the claim of the petitioners is allowed and as such the termination of services of petitioners *w.e.f.* 1-9-1999 by the respondent is set aside and the petitioners are ordered to be reinstated in service with seniority and continuity. However, the petitioners are not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioners are not entitled to back wages and the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 17th day of May, 2013.

By order,
Sd/-

*Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.*

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH**
Ref. No. 149 of 2007

Instituted on. 14-12-2008

Decided on 15-5-2013

Antu Yadav S/o Shri Kripal yadav, Sidhartha Labour Coloney-106, Village Khera, P.O & Tehsil Nalagarh, District Solan, HP. .. *Petitioner.*

Vs

The Managing Director, M/s Sidhartha Super Spinning Mills Ltd., Khera Tehsil Nalagarh, District Solan, HP. .. *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Rupesh Sharma, Advocate.

For respondent : Shri Rajeev Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether not taking of joining after availing leave on medical ground by the Management of M/s Sidhartha Super Spinning Mills Ltd., Khera Tehsil Nalagarh, District Solan, HP of Shri antu yadav S/o Shri Kripal Yadav and finally terminating his services *w.e.f.* 16-3-2006 without any charge sheet and enquiry is legal and justified? If not, what seniority, back wages and service benefits the aggrieved workman Shri Antu Yadav is entitled to?”

2. The petitioner filed the claim petition stating that he was engaged by the respondent as operator in the month of December, 1986 and thereafter, the petitioner worked honestly. The petitioner proceeded on leave *w.e.f.* 21-1-2006 to 20-2-2006 after getting the same sanctioned from the respondent management. The petitioner could not join his duties due to his ailment. The petitioner informed the respondent to extend his leave on the ground of illness vide registered post dated 21-2-2006. After recovering from illness, the petitioner went to the respondent management on 20-3-2006 but he was not allowed to join the duties. The petitioner intended to submit medical certificate but he was not heard and removed from service without any enquiry or chargesheet. Hence, petitioner challenged his termination *w.e.f.* 16-3-2006 being illegal. He also prayed to reinstate him with all consequential benefits including seniority and back wages.

3. The respondent contested the claim petition by filing a reply wherein preliminary objections as to maintainability and supersession of material facts by the petitioner were taken. On merits, respondent stated that the petitioner was to join his duties on 21-2-2006 but he did not turn up and as per standing orders of the respondent the name of workman was to be struck off from the rolls if he would remain absent for eight consecutive days. The petitioner was wrong doer, hence, his name was struck off from the roll vide letter dated 17-3-2006. So, there was no illegality in terminating the services of petitioner. The case of petitioner did not fall under retrenchment as petitioner himself failed to join his duties due to his own omission. Consequently, respondent prayed for the dismissal of the petition.

4. Petitioner filed rejoinder wherein he denied all the averments made by the respondent in reply and further reasserted the facts already stated by him in claim petition.

5. On the pleadings of the parties, the following issues were framed:—

1. Whether not taking of joining after availing leave on medical ground by the management of respondent of petitioner and finally terminating his services *w.e.f.* 16-3-2006 without any chargesheet and enquiry is illegal and unjustified as alleged?

.. OPP.

2. If issue no.1 is proved to what seniority, back wages and service benefits the petitioner is entitled to? .. OPP.

3. Whether the petitioner has abandoned the job of his own as alleged? .. OPR.

4. Whether the petitioner is gainfully employed as alleged? .. OPR.

5. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Petitioner led evidence on the aforesaid issues whereas respondent failed to lead any evidence despite affording many opportunities, hence, the evidence of respondent was closed by the order of the Court.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled for reinstatement with seniority and continuity but without back wages.

Issue No. 3 No.

Issue No. 4 Yes.

Relief. Reference answered in negative against the respondent per operative part of award.

Reasons for finding

Issue No.1 :

9. After hearing both the parties and going through the record carefully, I am of the considered opinion that the termination of services of petitioner *w.e.f.* 16-3-2006 is not sustainable under law, hence liable to be set aside for the reasons to be recorded hereinafter.

10. From the pleadings of the parties, it is not disputed that petitioner joined the respondent company in December, 1986. It is also undisputed fact that petitioner proceeded on sanctioned leave *w.e.f.* 21-1-2006 to 20-2-2006 and petitioner could not join his duties on 21-2-2006. As per petitioner he could not recover from illness and he had sent a request through

registered post, whereas the respondent has taken the plea that petitioner remained absent and as per standing orders for absence of eight consecutive days, the name of petitioner was struck off from the rolls of the respondent management.

11. Petitioner Antu Yadav stepped into the witness box as PW-1 and deposed all the facts as stated by him in claim petition. He produced in evidence the copy of postal receipt Ex. P-1 vide which he had sent request for extension of leave. The respondent did not dispute that petitioner was on sanctioned leave *w.e.f.* 21-1-2006 to 20-2-2006 on the ground of his illness. So, it cannot be held that the petitioner remained absent willfully from 21-2-2006 onwards. Since, his illness was accepted by the respondent, therefore, we have to appreciate the request of the petitioner which was sent through registered post Ex. P-1 that he could not recover from illness, therefore, he had applied for the extension of leave. The cross-examination of petitioner is suggesting that respondent struck off the name of petitioner for his absence for more than eight consecutive days in view of standing orders.

12. The respondent has placed on record the copy of standing orders. Para 13 (g) of standing orders is revealing that absence in a year for more than eight days without leave being sanctioned or after leave is refused or absence on account of arrest or detention for more than 15 days would be the ground for termination of workman. These standing orders are revealing that the absence should be without sanctioned leave. In other words the absence should be willful without any reason. But in the present case the petitioner was on sanctioned medical leave *w.e.f.* 21-1-2006 to 20-2-2006. So, after 20-2-2006 without hearing the petitioner it cannot be held that he remained willfully absent especially when he sent request for extension of leave through registered post. Here, I am of the opinion that respondent should have issued a notice to the petitioner to join his duties failing which the presumption could be drawn that petitioner remained willfully absent. Further, the respondent should have chargesheeted the petitioner for willful absence and the matter should have been inquired into. In the absence of any show cause notice, chargesheet and enquiry, the action taken by the respondent against the petitioner is not sustainable being violative of principle of natural justice. The petitioner has been thrown out from the service without hearing him. The petitioner was engaged by the respondent in December, 1986. That means he remained in service for nineteen years. There is nothing on record to show that the past conduct of petitioner is not good and he was habitual absentee.

13. Consequently, taking into account all the facts it stands established that not taking of joining after availing leave on medical ground by the respondent of petitioner and finally terminating his services *w.e.f.* 16-3-2006 without any chargesheet and enquiry is not sustainable under law and liable to set aside. Hence, this issue is decided in favour of petitioner and against the respondent.

Issue No. 2 :

14. For the reason recorded hereinabove while discussing issue no.1, the termination of services of petitioner *w.e.f.* 16-3-2006 by the respondent is hereby set aside. As the result, petitioner is entitled for reinstatement with seniority and continuity. However, the petitioner is not entitled to back wages as there is nothing on record to suggest that after 16-3-2006 the petitioner was not gainfully employed. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is partly decided in favour of petitioner.

Issue No. 3 :

15. For the reasons recorded hereinabove while deciding issue no.1, this issue is also decided against the respondent.

Issue No. 3 :

16. Although, respondent could not lead any evidence to suggest that petitioner was gainfully employed after his termination but at the same time it cannot be believed that after his termination on 16-3-2006 petitioner being technical hand remained without job and was unable to earn his livelihood. Taking into account all the facts and circumstances of the case, to my mind the petitioner was gainfully employed after this termination *w.e.f.* 16-3-2006. Accordingly, this issue is decided in favour of respondent.

Relief :

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from *w.e.f.* 16-3-2006 by the respondent is set aside and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages. The reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 15th Day of May, 2013.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. 151 of 2006

Instituted on. 18-11-2006

Decided on. 16-5-2013

Kundan Singh S/o Shri Jaiya Ram R/o Village Chanjah, P.O Kulah Sub Tehsil Kupvi,
Tehsil Chopal, District Shimla, HP. . . Petitioner.

Versus

1. The Managing Director, Himachal Road Transport Corporation, Main Bus Stand Shimla-3.
2. The Deputy Divisional Manager (Hqrs), Himachal Road Transport Corporation, Head Office, Shimla-3. . . Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner: Shri M.L Sharma, Ld. Csl.

For respondent: Ex-parte.

AWARD

The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of services of Shri Kundan Singh S/o Shri Haiya Ram workman by the (1) The Managing Director, Himachal Road Transport Corporation, Main Bus Stand Shimla-3.

(2) The Deputy Divisional Manager (Hqrs), Himachal Road Transport Corporation, Head Office, Shimla-3 *w.e.f.* 24-4-2001 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed claim petition stating that he was initially appointed as coal boy by the respondent for 89 days in October, 1995. Thereafter, he was appointed as Peon *w.e.f.* 16-10-1999 and he continued till 23-4-2001 when his services were wrongly and illegally terminated by the respondent. The petitioner stated that he completed 240 days in every calendar year but no notice was served upon him before his termination. Hence, his termination was against the provisions of Industrial Disputes Act, 1947. Petitioner further stated that the respondent retained junior person to him thereby violated the principle of last come first go. Consequently, petitioner prayed to set aside his termination and to reinstate him with all consequential service benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein preliminary objections as to maintainability, limitation, false and frivolous nature of claim were raised. On merits, respondent admitted that the petitioner was engaged as coal boy in 1995 but he was engaged for 30 days only. The services of petitioner were for specific period, so, after that specific period his services came to an end. He used to be reemployed as per the work requirement. The petitioner did not complete 240 days in a calendar year, hence, there was no question of serving any notice upon him. Respondent denied that junior persons to petitioner were engaged after his termination. Consequently, respondent prayed for the dismissal of the claim.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by respondent in reply and further reasserted the facts already stated by him in claim petition.

5. On the pleadings of the parties, the following issues were framed:—

1. Whether the service of petitioner has been illegally terminated *w.e.f.* 24-4-2001 without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? .. OPP.

2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? .. OPP.

3. Whether the present petition is not maintainable? .. OPR.

4. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Both the parties led evidence on the aforesaid issues.

7. It is relevant to state that initially the claim of petitioner was decided by my Ld. Predecessor vide award dated 31-8-2009 and the reference was decided accordingly. However, in CWP No. 7522 of 2011 decided on 30-7-2012, Hon'ble High Court set aside the award and remanded the same to decide afresh after affording opportunity to both the parties to bring on record additional material and adduce evidence.

8. Consequently, the reference was registered against its original number and opportunity was afforded to both the parties to lead fresh evidence and bring on record fresh record. Both the parties availed said opportunity and led oral as well as documentary evidence. When the case was listed for final arguments none appeared on behalf of respondent, hence, respondent was proceeded against ex parte.

9. I have heard ex parte arguments and gone through the record carefully.

10. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 Yes.

Issue No. 2 Entitled for reinstatement with seniority and continuity but without back wages.

Issue No. 3 No.

Relief: Reference answered in negative against the respondent per operative part of award.

Reasons for finding

Issue No. 1 :

11. After hearing both the parties and going through the record carefully, I am of the considered opinion that the termination of services of petitioner *w.e.f.* 24-4-2001 is in violation of the provisions of Industrial Disputes Act, 1947, hence liable to be set aside for the reasons to be recorded hereinafter.

12. It is undisputed fact that petitioner was initially engaged as coal boy by the respondent in 1995 and thereafter he was appointed as Peon. The petitioner has stepped into the witness box as PW-1 and deposed all the facts stated by him in his claim petition. He produced in evidence copies of his appointment orders from time to time Ex. PW-1/B to Ex. PW-1/J. The careful perusal of these orders are revealing that initially on 16-10-1999 the petitioner was appointed as part time peon for 89 days till 12-1-2000 and thereafter, from 13-1-2000 to 10-4-2000. Then he was again engaged as part time peon for 89 days *w.e.f.* 1-5-2000 to 28-7-2000. Lastly, he was engaged for 89 days *w.e.f.* 27-10-2000 to 23-1-2001. These different orders after regular breaks are revealing that only notional breaks were given to the petitioner in order to defeat the statutory provisions of the Industrial Disputes Act, 1947. It is settled law that these breaks cannot be taken into account to give any benefit to the respondent i.e the employer. Here, I am supported by the law laid down by their Lordships of Hon'ble Supreme Court reported in Haryana State Electronics Development Corporation Limited Vs Mamnl, (2006) 9 SCC 434. that appointment for a short period (89 days) and termination of services at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one year and a half year, in such circumstances, the Hon'ble Supreme Court has held the termination

not bonafide but adopted to defeat the object of the Act. Thus it is not covered by section 2 (oo) (bb) of the Industrial Disputes Act, 1947. Their lordships of the Hon'ble Supreme Court has held as under:—

“Section 2(oo) (bb) of the Industrial Disputes Act reads as under:

“2. (oo) (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein.”

“...It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent workman was repeatedly working on 89 days basis. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged, but was to defeat the rights available to her under section 25-F of the Act. The aforesaid practice at the hands of the petitioner management to employ the workman repeatedly after notional break clearly falls within the ambit and scope of unfair labour practice.”

Similarly our own Hon'ble High Court in case shri Manoj Kumar sharma Vs. HRTC & Another in CWP No. 39 of 06 dated 28-5-2007 has held that the intention of the management was not to engage the respondent workman for a specified period was to defeat the rights of a workman under section 25-F of the Act as in that case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. The practice has been adopted by the management of HRTC to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947 which amounts to unfair labour practice. In the instant case also the petitioner was initially appointed for 89 days and after giving him notional breaks, reappointment for another 89 days followed by others appointments for 89 days as is evident from Ex. PW-1/B to Ex. PW-1/J.

13. On behalf of respondent RW-1 Shri Dharm Pal appeared into the witness and deposed that he only brought the record of services of petitioner till 30-4-1997 and he did not bring the subsequent record. Although, the aforesaid appointment letters of petitioner are revealing that petitioner was engaged as part time peon but there is nothing in appointment letters for how many hours the petitioner was required to work in a day. The petitioner in his testimony has categorically deposed that the post of peon in respondent corporation is still vacant. That means the work is still available but respondent has not given appointment to the petitioner after 23-1-2001 it shows mala fide on the part of respondent.

14. The petitioner has also placed on record copy of award passed by this Court in reference no. 228 of 2002 dated 9-8-2009 wherein similarly placed peon who was engaged as part time basis namely Naresh Kumar was given the relief. His termination by the respondent was set aside being violative of provisions of section 25-F of Industrial Disputes Act, 1947.

15. For the aforesaid reasons the notional breaks in service of petitioner after 89 days cannot be looked into. To my mind, petitioner has continuously worked in 2000-01 for more than 240 days in a calendar year prior to his termination *w.e.f.* 24-1-2001. It is undisputed fact that no notice was served upon the petitioner before his termination. Under section 25-F of Industrial Disputes Act, 1947 the respondent was required to serve one month's notice to the petitioner or in lieu of that to pay one month's wages and compensation. But no steps were taken by the

respondent. Consequently, taking into account all the facts, the termination of services of petitioner *w.e.f.* 24-4-2001 is hereby set aside being violative of provisions of section 25-F of Industrial Disputes Act, 1947, hence, issue no. 1 is decided in favour of petitioner and against the respondent.

Issue No. 2 :

16. For the reason recorded hereinabove while discussing issue no.1, the termination of services of petitioner *w.e.f.* 24-4-2001 by the respondent is hereby set aside. As the result, petitioner is entitled for reinstatement with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Issue No. 3 :

17. There is nothing on record to suggest that the claim of petitioner is not maintainable, hence this issue is decided against the respondent.

Relief :

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 24-4-2001 by the respondent is set aside and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and as such the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 16th Day of May, 2013.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P)**

Ref. No. 29 of 2011

Instituted on. 22-6-2011

Decided on 16-5-2013

Mahima Chand S/o Shri Tota Ram R/o Village Ghaina, P.O Rama, Tehsil Nahan District
Sirmour, HP. .. *Petitioner.*

Vs.

The Collector of Forest Settlement Solan and Sirmour at Nahan, District Sirmour, H.P.
.. *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.L Garg, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the verbal termination of the services of Shri Mahima Chand S/o Shri Tota Ram chainman by the Collector, Forest Settlement Solan and Sirmour at Nahan District Sirmour, H.P w.e.f. year, 2007 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, whereas person junior to him have been retained by the employer, as alleged by the workman is legal and justified? If not, what back wages, service benefits and relief the above named workman is entitled to?”

2. The petitioner filed the claim petition stating that he was engaged on daily wage basis by the respondent in the month of January, 1995. The petitioner used to work for number of days since 1995 to 2008. It is further alleged that the respondent did not follow the principle of last come first go as junior workmen to petitioner namely Shyam Singh, Ramesh Kumar, Sukhbir Singh, Man Singh and Rameshwar are still working with the respondent and even their services have been regularized on completion of eight years of service, hence, the retrenchment of petitioner was illegal. Consequently, petitioner filed the claim petition challenging his termination and he further prayed that he be reinstated in service with all consequential benefits.

3. The respondents contested the claim petition by filing a reply wherein preliminary objection as to maintainability was taken. The respondent also stated that the petitioner was engaged in seasonal work on daily wages and in fact the petitioner did not complete 240 days in a calendar year prior to his retrenchment. At the end of every season, the services of petitioner were not required, so, there was no termination or retrenchment of the petitioner. All the labourers were engaged in accordance with seniority. On merits, the respondent stated that the petitioner was engaged in the year 1995 and worked upto year 2008 with intermediate breaks. The petitioner never completed 240 days in twelve calendar months in each calendar year. It is stated that the only those daily waged mazdoors who have fulfilled the terms and conditions of eight years of continuous service with 240 days in a calendar year have been regularized. The engagement and disengagement of the workers was done as per the principle of last come first go. No juniors to the petitioner were retained. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of the petitioner by the respondent w.e.f. year 2007 is in violation of the provisions of Industrial Disputes Act, 1947 ? . . OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . . OPP.
3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 : Yes.

Issue No. 2 : Entitled for reinstatement with seniority and continuity but without back wages.

Relief : Reference answered in negative per operative part of award.

Reasons for finding

Issue No. 1 :

9. After hearing both the parties and going through the record carefully, I am of the considered opinion that the termination of petitioner *w.e.f.* year, 2007 by the respondent is against the provisions of Industrial Disputes Act, 1947, hence, the same is not sustainable under law, for the reasons to be recorded hereinafter.

10. There is no dispute that petitioner was a daily waged workman under the respondent department. Petitioner himself stepped into the witness box as PW-1 and deposed all the facts which have been stated by him in claim petition. However, on the other hand, on behalf of respondent RW-1 Shri Sunil Kumar Dy. Ranger, Nahan was examined who deposed that petitioner was engaged in 1995 on daily wages basis for seasonal work. PW-2 Shri Krishan Kumar has proved the copy list seniority list Ex. P-1 of petitioner which was signed by him. From the testimony of RW-1 Shri Sunil Kumar as well as seniority list Ex. P-1, it is clear that the petitioner has not worked for 240 days in a calendar year prior to his retrenchment. Petitioner could not produce any evidence to prove that he worked for 240 days prior to his termination in a calendar year. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination, the petitioner is not entitled to any protection under section 25-F of the Industrial Disputes Act, 1947. Here, I am supported by law laid down by Hon'ble Supreme Court reported in AIR 2006 S.C. 110 in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wager— Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days—No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”

Since the petitioner has failed to prove on record that he had worked for 240 days in a calendar year prior to his retrenchment, therefore, there was no occasion and legal requirement for the respondent to serve a notice upon him as envisaged under section 25-F of Industrial Disputes Act, 1947.

11. However, at the same time, I find sufficient evidence on record to establish that after the termination of petitioner, respondent engaged new workmen. RW-1 Shri Sunil Kumar in his

cross-examination has admitted that petitioner had worked *w.e.f.* 1995 to 2008 and S/Shri Shyam Singh, Ramesh Kumar and Sukhbir Singh daily wagers were engaged for the first time in 1999. This witness has further admitted that no notice was served upon the petitioner to resume his duties. PW-2 Shri Krishan Kumar produced seniority list of daily wagers Ex. P-1 which is revealing that workmen junior to petitioner are still working with the respondent. This fact established that when the petitioner was retrenched in 2007, junior workmen to him were retained in employment by the respondent. This is violation of section 25-G of Industrial Disputes Act, 1947 which envisaged the principle of first come last go. Since, the aforesaid juniors were retained by the respondent in employment, so, the respondent could have easily retrenched them in the year of 2007 when the petitioner was retrenched. Petitioner being the senior was entitled to be retained by the respondent. RW-1 has stated that no notice to recall the petitioner was given. Therefore, the retrenchment of petitioner is in violation of the provisions of section 25-G of the Industrial Disputes Act, 1947 which reads as under:

“Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

12. Accordingly, for the reasons discussed hereinabove, the termination of services of petitioner *w.e.f.* year 2007 is no sustainable under law being in violation of section 25-G of Industrial Disputes Act, 1947. Hence, this issue is decided in favour of petitioner.

Issue No. 2 :

13. For the reason recorded hereinabove while discussing issue no.1, the termination of services of petitioner *w.e.f.* year 2007 by the respondent is hereby set aside and the petitioner is held entitled to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Relief :

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination of services of petitioner *w.e.f.* year, 2007 by the respondent is set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages and the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 16th day of May, 2013.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P)**

Ref. No. 30 of 2011

Instituted on. 22-6-2011

Decided on 16-5-2013

Pawan Kumar S/o Shri Phool Singh R/o House No. 2165/12 Katch Tank Nahan District Sirmour, HP. . . *Petitioner.*

Vs

The Collector of Forest Settlement Solan and Sirmour at Nahan, District Sirmour, H.P. . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.L Garg, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the verbal termination of the services of Shri Pawan Kumar S/o Phool Singh chainman by the Collector, Forest Settlement Solan and Sirmour at Nahan District Sirmour, H.P *w.e.f.* year, 2005 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, whereas person junior to him have been retained by the employer, as alleged by the workman is legal and justified? If not, what back wages, service benefits and relief the above named workman is entitled to?”

2. The petitioner filed the claim petition stating that he was engaged on daily wage basis by the respondent and worked till Jan., 1998. Thereafter, the petitioner worked continuously till 2005. It is further alleged that the respondent did not follow the principle of last come first go as junior workmen to petitioner namely Shyam Singh, Ramesh Kumar, Sukhbir Singh, Man Singh and Rameshwar are still working with the respondent and even their services have been regularized on completion of eight years of service, hence, the retrenchment of petitioner was illegal. Consequently, petitioner filed the claim petition challenging his termination and he further prayed that he be reinstated in service with all consequential benefits.

3. The respondents contested the claim petition by filing a reply wherein preliminary objection as to maintainability was taken. The respondent also stated that the petitioner was engaged in seasonal work on daily wages and in fact the petitioner did not complete 240 days in a calendar year prior to his retrenchment. At the end of every season, the services of petitioner were not required, so, there was no termination or retrenchment of the petitioner. All the labourers were engaged in accordance with seniority. On merits, the respondent stated that the petitioner was engaged in the year 1998 and worked upto year 2008 with intermediate breaks. The petitioner never completed 240 days in twelve calendar months in each calendar year. It is stated that the only those

daily waged mazdoors who have fulfilled the terms and conditions of eight years of continuous service with 240 days in a calendar year have been regularized. The engagement and disengagement of the workers was done as per the principle of last come first go. No juniors to the petitioner were retained. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of the petitioner by the respondent *w.e.f.* year 2005 is in violation of the provisions of Industrial Disputes Act, 1947? . . OPP.

2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . . OPP.

3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 : Yes.

Issue No. 2 : Entitled for reinstatement with seniority and continuity but without back wages.

Relief : Reference answered in negative per operative part of award.

Reasons for finding

Issue No. 1 :

9. After hearing both the parties and going through the record carefully, I am of the considered opinion that the termination of petitioner *w.e.f.* year, 2005 by the respondent is against the provisions of Industrial Disputes Act, 1947, hence, the same is not sustainable under law, for the reasons to be recorded hereinafter.

10. There is no dispute that petitioner was a daily waged workman under the respondent department. Petitioner himself stepped into the witness box as PW-1 and deposed all the facts which have been stated by him in claim petition. However, on the other hand, on behalf of respondent RW-1 Shri Sunil Kumar Dy. Ranger, Nahan was examined who deposed that petitioner was engaged in 1998 on daily wages basis for seasonal work. PW-2 Shri Krishan Kumar has proved the copy list seniority list Ex. P-1 of petitioner which was signed by him. From the testimony of RW-1 Shri Sunil Kumar as well as seniority list Ex. P-1, it is clear that the petitioner has not worked for 240 days in a calendar year prior to his retrenchment. Petitioner could not produce any evidence to prove that he worked for 240 days prior to his termination in a calendar year. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination, the petitioner is not entitled to any

protection under section 25-F of the Industrial Disputes Act, 1947. Here, I am supported by law laid down by Hon'ble Supreme Court reported in AIR 2006 S.C. 110 in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wager— Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days—No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”

Since the petitioner has failed to prove on record that he had worked for 240 days in a calendar year prior to his retrenchment, therefore, there was no occasion and legal requirement for the respondent to serve a notice upon him as envisaged under section 25-F of Industrial Disputes Act, 1947.

11. However, at the same time, I find sufficient evidence on record to establish that after the termination of petitioner, respondent engaged new workmen. RW-1 Shri Sunil Kumar in his cross-examination has admitted that petitioner had worked *w.e.f.* 1998 to 2008 and S/Shri Ramesh and Sukhbinder etc. daily wagers were engaged for the first time in 1999. This witness has further admitted that no notice was served upon the petitioner to resume his duties. PW-2 Shri Krishan kumar produced seniority list of daily wagers Ex. P-1 which is revealing that workmen junior to petitioner are still working with the respondent. This fact established that when the petitioner was retrenched in 2005, junior workmen to him were retained in employment by the respondent. This is violation of section 25-G of Industrial Disputes Act, 1947 which envisaged the principle of first come last go. Since, the aforesaid juniors were retained by the respondent in employment, so, the respondent could have easily retrenched them in the year of 2005 when the petitioner was retrenched. Petitioner being the senior was entitled to be retained by the respondent. RW-1 has stated that no notice to recall the petitioner was given. Therefore, the retrenchment of petitioner is in violation of the provisions of section 25-G of the Industrial Disputes Act, 1947 which reads as under:

“Procedure for retrenchment.— Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

12. Accordingly, for the reasons discussed hereinabove, the termination of services of petitioner *w.e.f.* year 2005 is no sustainable under law being in violation of section 25-G of Industrial Disputes Act, 1947. Hence, this issue is decided in favour of petitioner.

Issue No. 2 :

13. For the reason recorded hereinabove while discussing issue no.1, the termination of services of petitioner *w.e.f.* year 2005 by the respondent is hereby set aside and the petitioner is held entitled to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Relief:

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination of services of petitioner *w.e.f.* year, 2005 by the respondent is set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages and the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 16 th day of May, 2013.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla. Camp at Nahan .*

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P)**

Ref. No. 50 of 2011

Instituted on. 1-11-2011

Decided on 16-5-2013

Sukh Dev S/o late shri Munna Ram R/o Village Kotrdi Kanlog P.O Rama, Tehsil Nahan
District Sirmour, HP. . . Petitioner.

Vs.

1. The Collector Forest Settlement Solan and Sirmour at Nahan, District Sirmour, H.P.
2. The Assistant Conservator of Forest Settlement Solan and Sirmour at Nahan, District Sirmour, H.P. . . Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.L Garg, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of the services of Shri Sukh Dev S/o Munna Ram chainman R/o Village Kotrdi Kanlog P.O Rama, Tehsil Nahan District Sirmour, HP by the (i) Collector, Forest Settlement Solan and Sirmour at Nahan District Sirmour, H.P (ii) the Assistant Conservator of Forest Settlement Solan and Sirmour at Nahan, District Sirmour, H.P. from, time to time *w.e.f.* 1998 to 2007 and finally *w.e.f.* 17-2-2008 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and

justified? If not, what relief of reinstatement and other service benefits Shri Sukh Dev workman is entitled to?"

2. The petitioner filed the claim petition stating that he was engaged on daily wage basis by the respondent *w.e.f.* 1995. The petitioner used to work for number of days since 1995 to 2008. It is further alleged that the respondent did not follow the principle of last come first go as junior workmen to petitioner namely Shyam Singh, Ramesh Kumar, Sukhbir Singh, Man Singh and Rameshwar are still working with the respondent and even their services have been regularized on completion of eight years of service, hence, the retrenchment of petitioner was illegal. Consequently, petitioner filed the claim petition challenging his termination and he further prayed that he be reinstated in service with all consequential benefits.

3. The respondents contested the claim petition by filing a reply wherein preliminary objection as to maintainability was taken. The respondent also stated that the petitioner was engaged in seasonal work on daily wages and in fact the petitioner did not complete 240 days in a calendar year prior to his retrenchment. At the end of every season, the services of petitioner were not required, so, there was no termination or retrenchment of the petitioner. All the labourers were engaged in accordance with seniority. On merits, the respondent stated that the petitioner was engaged in the year 1995 and worked upto year 2008 with intermediate breaks. The petitioner never completed 240 days in twelve calendar months in each calendar year. It is stated that the only those daily waged mazdoors who have fulfilled the terms and conditions of eight years of continuous service with 240 days in a calendar year have been regularized. The engagement and disengagement of the workers was done as per the principle of last come first go. No juniors to the petitioner were retained. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the preliminary objections taken by the respondent in reply and further reasserted the averments already made in the claim petition.

5. On the pleadings of the parties, the following issues were framed.

1. Whether the termination of the petitioner by the respondents from time to time *w.e.f.* 1998 to 2007 and finally *w.e.f.* 17-2-2008 is in violation of the provisions of Industrial Disputes Act, 1947? . . OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . . OPP.
3. Whether the petitioner was engaged for seasonal work? If so, its effect? . . OPR.
4. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. : 1 Yes.

Issue No. 2 : Entitled for reinstatement with seniority and continuity but without back wages.

Issue No. 3 :

Relief : Reference answered in negative per operative part of award.

Reasons for finding**Issue No. 1 :**

9. After hearing both the parties and going through the record carefully, I am of the considered opinion that the termination of petitioner w.e.f. 17.2.2008 by the respondent is against the provisions of Industrial Disputes Act, 1947, hence, the same is not sustainable under law, for the reasons to be recorded hereinafter.

10. There is no dispute that petitioner was a daily waged workman under the respondent department. Petitioner himself stepped into the witness box as PW-1 and deposed all the facts which have been stated by him in claim petition. However, on the other hand, on behalf of respondent RW-1 Shri Sunikl Kumar Dy. Ranger, Nahan was examined who deposed that petitioner was engaged in 1995 on daily wages basis for seasonal work. PW-2 Shri Krishan Kumar has proved the copy list seniority list Ex. P-1 of petitioner which was signed by him. From the testimony of RW-1 Shri Sunil Kumar as well as seniority list Ex. P-1, it is clear that the petitioner has not worked for 240 days in a calendar year prior to his retrenchment. Petitioner could not produce any evidence to prove that he worked for 240 days prior to his termination in a calendar year. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination, the petitioner is not entitled to any protection under section 25-F of the Industrial Disputes Act, 1947. Here, I am supported by law laid down by Hon'ble Supreme Court reported in AIR 2006 S.C. 110 in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wager— Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days—No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”

Since the petitioner has failed to prove on record that he had worked for 240 days in a calendar year prior to his retrenchment, therefore, there was no occasion and legal requirement for the respondent to serve a notice upon him as envisaged under section 25-F of Industrial Disputes Act, 1947.

11. However, at the same time, I find sufficient evidence on record to establish that after the termination of petitioner, respondent engaged new workmen. RW-1 Shri Sunil Kumar in his cross-examination has admitted that petitioner had worked w.e.f. 1995 to 2006 and S/Shri Shyam Singh, Ramesh Kumar and Sukhbir Singh daily wagers were engaged for the first time in 1999. This witness has further admitted that no notice was served upon the petitioner to resume his duties. PW-2 Shri Krishan Kumar produced seniority list of daily wagers Ex. P-1 which is revealing that workmen junior to petitioner are still working with the respondent. This fact established that when the petitioner was retrenched on 17-2-2008, junior workmen to him were retained in employment by the respondent. This is violation of section 25-G of Industrial Disputes Act, 1947 which envisaged the principle of first come last go. Since, the aforesaid juniors were retained by the respondent in employment, so, the respondent could have easily retrenched them in the year of

2008 when the petitioner was retrenched. Petitioner being the senior was entitled to be retained by the respondent. RW-1 has stated that no notice to recall the petitioner was given. Therefore, the retrenchment of petitioner is in violation of the provisions of section 25-G of the Industrial Disputes Act, 1947 which reads as under:

“Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

12. Accordingly, for the reasons discussed hereinabove, the termination of services of petitioner from time to time w.e.f. 1998 to 2007 and finally w.e.f. 17-2-2008 is no sustainable under law being in violation of section 25-G of Industrial Disputes Act, 1947. Hence, this issue is decided in favour of petitioner.

Issue No. 2 :

13. For the reason recorded hereinabove while discussing issue no.1, the termination of services of from time to time w.e.f. 1998 to 2007 and finally w.e.f. 17-2-2008 by the respondent is hereby set aside and the petitioner is held entitled to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Issue No. 3 :

14. For the reasons recorded herein above while discussing issue no.1, it cannot be held that the petitioner was engaged for seasonal work, hence, this issue is decided against the respondent.

Relief :

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination of services of petitioner from time to time w.e.f. 1998 to 2007 and finally w.e.f. 17-2-2008 by the respondent is set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages and the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette.

File, after completion, be consigned to records.

Announced in the open court today on this 16 th day of May, 2013.

By order,
Sd/-

*Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.*

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P)**

Ref. No. 100 of 2011

Instituted on. 23-6-2011

Decided on 18-5-2013

Liyakat Ali S/o Shri Barkat Ali, R/o Village Palohri, P.O Darpur, Tehsil Paonta Sahib, District Sirmour, HP. . . Petitioner.

Vs.

1. The Divisional Forest officer (Wild Life) Khalini Shimla-2.
2. The Range Officer (Wild Life) Simblebara Nursury, Paonta Sahib, District Sirmour, H.P. . . Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P Sharma, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the initial date of engagement of Shri Liyakat Ali S/o Shri Barkat Ali under the employment of The Divisional Forest Officer (Wild Life) Khalini Shimla-2 H.P and The Range Officer, Wild Life, Simblebara Nursury, Tehsil Paonta Sahib, District Sirmour HP is January, 2007 or March, 2008?

“Whether termination of the services of Shri Liyakat Ali S/o Shri Barkat Ali by the Divisional Forest Officer (Wild Life) Khalini Shimla-2 H.P and the Range Officer, Wild Life, Simblebara Nursury, Tehsil Paonta Sahib, District Sirmour HP without complying the provisions of the Industrial Disputes Act, 1947 w.e.f. September, 2009 as alleged by the workman is legal and justified? If not, what relief of service benefits and compensation the above workman is entitled to?”

2. The petitioner filed the claim petition stating that he was engaged in Simbalwala Sanctuary w.e.f. Jan., 2008 and he worked continuously till November, 2010. He was terminated without following the mandatory provisions of Industrial Disputes Act, 1947. He completed 240 days in a calendar year but no notice was served upon him. The respondent did not follow the principle of last come first go and junior workmen to petitioner were still working with the respondent after the retrenchment of petitioner. Hence, petitioner prayed to set aside his termination and to reinstate him with all consequential benefits.

3. The respondents contested the claim petition by filing a reply wherein preliminary objection as to maintainability was taken. On merits it was stated that the petitioner was engaged in March, 2008 and not in Jan., 2008. The petitioner only worked for few months and did not complete 240 days in a calendar year. The petitioner himself abandoned the job and he was never terminated. It was further stated that no juniors to petitioner were engaged or working with the respondent. Consequently, no provision of Industrial Disputes Act, 1947 was violated by the respondent, hence, respondent prayed for the dismissal of the claim petition.

4. Petitioner did not file rejoinder. On the pleadings of the parties, the following issues were framed.

1. Whether the initial engagement of the petitioner is January, 2007 or March, 2008?
. . OPP.

2. Whether the termination of services of petitioner by the respondents *w.e.f.* September, 2009 is in violation of the provisions of Industrial Disputes Act, 1947? . . OPP.

3. If issue no.1 & 2 are proved in affirmative to what relief the petitioner is entitled to? . . OPP.

4. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No.1 : Petitioner was engaged in March, 2008.

Issue No.2 : No.

Issue No. 3 : Not entitled to any relief.

Relief : Reference answered in affirmative against the petitioner per operative part of award.

Reasons for finding

Issue No.1 :

8. The petitioner has alleged that he was engaged by the respondent in Jan., 2008 whereas respondent stated the petitioner was engaged in March, 2008. Petitioner stepped into the witness box as Pw-1 and deposed that he worked with the respondent *w.e.f.* 1-1-2008. This version of petitioner has been disputed by the respondent as evident from the cross-examination of petitioner.

9. On behalf of respondent RW-1 Laiq Ram, Dy. Ranger stepped into the witness box and he categorically deposed that petitioner was engaged in March, 2008. He also tendered in evidence the copy of mandays chart of petitioner Ex. PW-1/A which is revealing that petitioner worked for the first time under respondent in March, 2008 for 31 days. This mandays chart did not reveal that petitioner worked in Jan., 2008. Hence, in the light of aforesaid mandays chart it stands established that petitioner was engaged in March, 2008. Hence, this issue is decided accordingly by holding that the petitioner was engaged in March, 2008.

Issue No. 2 :

10. After hearing both the parties and going through the record carefully, there is nothing on record to establish that petitioner was terminated by the respondent in violation of the provisions of Industrial Disputes Act, 1947.

11. The petitioner has alleged that he worked continuously for 240 days in a calendar year prior to his termination and at the time of his termination, he was not served with any notice or in lieu of notice he was not paid one month's wages and compensation as required under section 25-F of Industrial Disputes Act, 1947. These facts have been deposed by the petitioner in his statement when he appeared in the witness box as PW-1. This version of petitioner is disputed by the

respondent as RW-1 has categorically deposed that petitioner never worked for 240 days in a calendar year. He tendered in evidence copy of mandays chart of petitioner Ex. PW-1/A which is revealing that petitioner worked from March, 2008 to December, 2008 and in the year of 2008, he had worked only for 122 days. Apart from bald statement of petitioner he could not lead any other evidence to rebut the aforesaid mandays chart. Hence, I am satisfied that petitioner did not work for 240 days in a calendar year. There is no legal requirement for the respondent to serve any notice or to pay one month's wages and compensation to the petitioner as envisaged under section 25-F of Industrial Disputes Act, 1947.

12. Petitioner has also alleged that after his termination respondent engaged junior persons to him namely Ramzan and Noor Hassan. Again this version has been contested by the respondent. RW-1 Laiq Ram has deposed that petitioner himself had abandoned the job and thereafter no new workman was engaged. He has categorically deposed that Noor Hassan and Ramzan were not working in the Wild Life Sanctuary. The petitioner in his testimony has stated that he did not produced any record to show that junior to him are still working with the respondent.

13. Thus, in the absence of sufficient and convincing evidence on record, it cannot be held that the respondent terminated the services of petitioner and thereafter retained the junior workmen and thereby violated the provisions contained under section 25-G of Industrial Disputes Act, 1947.

14. Accordingly, for the aforesaid reasons, I do not find any evidence to establish that the services of petitioner were terminated by the respondent in violation of the provisions of Industrial Disputes Act, 1947, hence, this issue is decided against the petitioner and in favour of respondent.

Issue No. 3 :

15. For the reason recorded hereinabove while deciding issues no.1 & 2, the petitioner is not entitled to any relief. Accordingly, this issue is decided against the petitioner.

Relief:

For the reasons recorded hereinabove, the claim of the petitioner is dismissed and as such the petitioner is not entitled to any relief as prayed for and the reference is answered in affirmative against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 18 th day of May, 2013.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P).**

Ref. No. 99 of 2011

Instituted on. 23-6-2011

Decided on 18-5-2013

Sher Singh S/o Shri Dilel Singh, R/o Village Johron, P.O Puruwala, Tehsil Paonta Sahib, District Sirmour, HP. . . Petitioner.

Vs.

3. The Divisional Forest officer (Wild Life) Khalini Shimla-2.
4. The Range Officer (Wild Life) Simblebara Nursury, Paonta Sahib, District Sirmour, H.P. . . Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri O.P Sharma, Advocate.

For respondent : Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the initial date of engagement of Shri Sher Singh S/o Shri Dilel Singh under the employment of The Divisional Forest Officer (Wild Life) Khalini Shimla-2 H.P and The Range Officer, Wild Life, Simblebara Nursury, Tehsil Paonta Sahib, District Sirmour HP is January, 2003 or March, 2007 ?

“Whether termination of the services of Shri Sher Singh S/o Dilel Singh by the Divisional Forest Officer (Wild Life) Khalini Shimla-2 H.P and the Range Officer, Wild Life, Simblebara Nursury, Tehsil Paonta Sahib, District Sirmour HP without complying the provisions of the Industrial Disputes Act, 1947 w.e.f. September, 2009 as alleged by the workman is legal and justified? If not, what relief of service benefits and compensation the above workman is entitled to?”

2. The petitioner filed the claim petition stating that he was engaged in Amargarh Wildlife Sanctuary w.e.f. 1.1.1992 to December, 1993. The petitioner was again engaged in the year 2005 and he worked continuously till November, 2010. He was terminated without following the mandatory provisions of Industrial Disputes Act, 1947. He completed 240 days in a calendar year but no notice was served upon him. The respondent did not follow the principle of last come first go and junior workmen to petitioner were still working with the respondent after the retrenchment of petitioner. Hence, petitioner prayed to set aside his termination and to reinstate him with all consequential benefits.

3. The respondents contested the claim petition by filing a reply wherein preliminary objection as to maintainability was taken. On merits it was stated that the petitioner was engaged in April, 2007 and not in Jan., 1992. The petitioner only worked for few months and did not complete 240 days in a calendar year. The petitioner himself abandoned the job and he was never terminated. It was further stated that no juniors to petitioner were engaged or working with the respondent. Consequently, no provision of Industrial Disputes Act, 1947 was violated by the respondent, hence, respondent prayed for the dismissal of the claim petition.

4. Petitioner did not file rejoinder. On the pleadings of the parties, the following issues were framed.

1. Whether the initial engagement of the petitioner is January, 2003 or March, 2007?
.. OPP.

2. Whether the termination of services of petitioner by the respondents *w.e.f.* September, 2009 is in violation of the provisions of Industrial Disputes Act, 1947? . . OPP.

3. If issue no.1 & 2 are proved in affirmative to what relief the petitioner is entitled to? . . OPP.

4. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue No. 1 : Petitioner was engaged in April, 2007.

Issue No. 2 : No.

Issue No. 3 : Not entitled to any relief.

Relief : Reference answered in affirmative against the petitioner per operative part of award.

Reasons for finding

Issue No. 1 :

8. The petitioner has alleged that he was engaged by the respondent on 1-1-1992 and worked till December, 1993 and thereafter he worked with the respondent *w.e.f.* 2005 to November, 2010 whereas respondent stated the petitioner was engaged in April, 2005. Petitioner stepped into the witness box as PW-1 and deposed that he worked with the respondent *w.e.f.* 1-1-1992 to December, 1993 and thereafter from 2005 to November, 2010. This version of petitioner has been disputed by the respondent as evident from the cross-examination of petitioner.

9. On behalf of respondent RW-1 Laiq Ram, Dy. Ranger stepped into the witness box and he categorically deposed that petitioner was engaged in April, 2007. He also tendered in evidence the copy of mandays chart of petitioner Ex. PW-1/A which is revealing that petitioner worked for the first time under respondent in March, 2007 for 30 days. This mandays chart did not reveal that petitioner worked in 1992 and thereafter in 2003. Hence, in the light of aforesaid mandays chart it stands established that petitioner was engaged in April, 2007. Hence, this issue is decided accordingly by holding that the petitioner was engaged in April, 2007.

Issue No. 2 :

10. After hearing both the parties and going through the record carefully, there is nothing on record to establish that petitioner was terminated by the respondent in violation of the provisions of Industrial Disputes Act, 1947. continuously for 240 days in a calendar year prior to his termination and at the time of his termination, he was not served with any notice or in lieu of notice he was not paid one month's wages and compensation as required under section 25-F of Industrial Disputes Act, 1947. These facts have been deposed by the petitioner in his statement when he appeared in the witness box as PW-1. This version of petitioner is disputed by the respondent as

RW-1 has categorically deposed that petitioner never worked for 240 days in a calendar year. He tendered in evidence copy of mandays chart of petitioner Ex. PW-1/A which is revealing that petitioner worked from April, 2007 to March, 2008 and in the year of 2008, he had worked only for 61 days. Apart from bald statement of petitioner he could not lead any other evidence to rebut the aforesaid mandays chart. Hence, I am satisfied that petitioner did not work for 240 days in a calendar year. There is no legal requirement for the respondent to serve any notice or to pay one month's wages and compensation to the petitioner as envisaged under section 25-F of Industrial Disputes Act, 1947.

12. Petitioner has also alleged that after his termination respondent engaged junior persons to him namely Ramzan and Noor Hassan. Again this version has been contested by the respondent. RW-1 Laiq Ram has deposed that petitioner himself had abandoned the job and thereafter no new workman was engaged. He has categorically deposed that Noor Hassan and Ramzan were not working in the Wild Life Sanctuary. The petitioner in his testimony has stated that he did not produce any record to show that junior to him are still working with the respondent.

13. Thus, in the absence of sufficient and convincing evidence on record, it cannot be held that the respondent terminated the services of petitioner and thereafter retained the junior workmen and thereby violated the provisions contained under section 25-G of Industrial Disputes Act, 1947.

14. Accordingly, for the aforesaid reasons, I do not find any evidence to establish that the services of petitioner were terminated by the respondent in violation of the provisions of Industrial Disputes Act, 1947, hence, this issue is decided against the petitioner and in favour of respondent.

Issue No. 3 :

15. For the reason recorded hereinabove while deciding issues no.1 & 2, the petitioner is not entitled to any relief. Accordingly, this issue is decided against the petitioner.

Relief :

For the reasons recorded hereinabove, the claim of the petitioner is dismissed and as such the petitioner is not entitled to any relief as prayed for and the reference is answered in affirmative against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 18 th day of May, 2013.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 24th May, 2013

No. Sharm (A) 7-1/2005 (Award)-part-file.—In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Shimla of the following cases on the website of Labour & Employment Department:—

Sl. No.	Case No.	Title of the Case	Date of Award
1.	205/2003	Ku Kanta Devi V/s I&PH Shimla	27-4-2013
2.	30/2010	Shri Umesh Prasad V/s M/s Deepak Spineer, Ltd. Baddi	27-4-2013
3.	72/2010	Smt. Paramjeet V/s M/s Torgee Pharmance Ltd. Baddi	29-4-2013
4.	99/2009	Smt. Uma Devi V/s -do-	29-4-2013
5.	7/2005	Shri Mohan Singh V/s HPSEBP/Sahib	26-4-2013
6.	34/2010	Shri Bharat Singh V/s Member Seety Special Shogi	12-4-2013
7.	75/2010	Shri Ramesh Chand V/s M/s Nova Security Chandigarh	3-4-2013
8.	76/2010	Shri Jai Dev V/s -do-	3-4-2013
9.	57/2010	Sh. Suresh Kumar V/s M.D. M/s Nexue Health & Beuaty care Baddi.	1-4-2013
10.	107/2010	Shri Jaspreet Singh V/s M/s Synergy Telecommunication Nalagrah.	1-4-2013
11.	59/2009	Shri Darshan lal V/s G. M. Cement corp. Sirmour	10-4-2013
12.	106/2010	Shri Sanjeev Gautam V/s M/s Ebony & Company Baddi	4-4-2013
13.	83/2010	Shri Diwan Chand V/s Asian Electronics Pvt. Ltd.	12-4-2013
14.	84/2010	Shri Rattan Chand V/s -do-	12-4-0213
15.	85/2010	Shri Sadhu Ram V/s -do-	12-4-2013

By order,

Sd/-

Addl. Chief Secretary (Lab. & Emp.)

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH

Ref No : 205 of 2003

Instituted On : 4.8.2003

Decided On : 27.4.2013

Kumari Kanta Devi D/o Shri Mansa Ram, V.P.O Ghanagret, Tehsil Amb, District Una, HP.
Petitioner.

VERSUS

State of Himachal Pradesh through the Executive Engineer, Irrigation & Public Health
Division-1 Shimla, HP.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner: Shri Salochna Kondal, Advocate.
For respondent: Shri Jagdish Kanwar, Dy. DA.

AWARD

The following reference has been received for adjudication by this Court from the appropriate government:—

“Whether the termination of services of Kumari Kanta Devi D/o Shri Mansa Ram daily wages Steno Typist by the Executive Engineer, I & PH Division No.1 Shimla 171009, w.e.f. 16.01.2001 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of seniority service benefits and amount of compensation the aggrieved workman is entitle to?”

2. Initially the reference was decided by my Ld. Predecessor vide award dated 9.6.2008 and the claim of petitioner was dismissed. Consequently, petitioner Kanta Devi filed CWP No. 1801 of 2008-G before Hon’ble High Court which was decided vide order dated 12.11.2012 vide which Hon’ble High Court set aside the award dated 9.6.2008 and remanded the case back to this Court to decide the matter afresh with the direction to give opportunity to both the parties to adduce additional documentary evidence. Hon’ble High Court also directed to take into account the fact that petitioner had served more than 89 days and persons junior to her were retained by the department.

3. The petitioner has filed the claim petition stating that she belongs to scheduled cast family and she did Post Graduate in Political Science. She also new shorthand as well as typing in English and Hindi. She was engaged on daily wages as steno-typist by the respondent for 89 days with the approval of government of H.P. w.e.f. 13.8.1997 to 9.11.1997. Since, the work and funds were available so, she was again engaged and she worked w.e.f. 16.1.1998 to 15.4.1998. Thereafter, respondent reengaged her from 20.10.2000 to 16.1.2001 when she was verbally asked not to attend the office from 17.1.2001. The petitioner worked w.e.f. 13.8.1997 to 16.1.2001, hence, she could not be terminated verbally in the absence of any notice. Petitioner further stated that after her termination, the respondent engaged new workmen and also retained junior workmen to her. Hence, petitioner challenged her termination against the provisions of Industrial Disputes Act, 1947 and prayed to set aside her termination and to reinstate her with all consequential service benefits.

4. The respondent contested the claim of petitioner by filing a reply wherein preliminary objections as to want of notice under section 80 CPC, limitation and maintainability were raised. On merits, it was stated that the petitioner was engaged thrice for 89 days specifically with the prior approval of Finance Department. So, her engagement was not continuous but only for 89 days each on three occasions. She did not complete 240 days in a calendar year prior to her termination. Thus, there was no legal requirement to serve a notice upon her. The petitioner had challenged her termination before Administrative Tribunal and had also filed a contempt petition but the same were rejected. It was denied that any junior to petitioner were retained or engaged. It was stated that one Manjeet Singh was indicated in IPH Division, Jubbal and he was not under the control of respondent. Consequently, respondent prayed for the dismissal of the petition.

5. Petitioner filed rejoinder wherein he denied preliminary objection taken by the respondent in reply and further reasserted the facts already stated by him in claim petition.

6. The following points arise for determination in this case:

1. Whether the termination of services of Ms. Kanta Devi petitioner, daily wages steno typist by the Executive Engineer IPH Division-1 Shimla w.e.f. 16.1.2001 is improper and unjustified without complying the provisions of Industrial Disputes Act, 1947 as alleged?
2. If point No-1 is answered in affirmative to what amount, service benefits, the petitioner is entitled to and from whom?
3. Relief.

7. As stated hereinabove, the reference was initially decided by my Learned Predecessor vide award dated 9.6.2008. However, the same was set aside by the Hon'ble High Court in CWP No. 1801 of 2008-G. As per the directions of Hon'ble High Court opportunity was given to both the parties to lead additional evidence and both the parties filed in evidence the documents.

8. I have heard both the parties and gone through the record carefully.

9. For the reasons to be recorded hereinafter my findings on the aforesaid points are as under:

Point No. 1: No.

Point No. 2 : Not entitled to any relief.

Relief : Claim dismissed per operative part of award.

Reasons for Findings

Point No. 1.

10. After hearing both the parties and going through the record of the case carefully, I am of the considered opinion that the termination of services of petitioner Kanta Devi is not unjustified and against the provisions of Industrial Disputes Act, 1947.

11. From the pleadings as well as evidence of the parties, it is undisputed fact that petitioner was engaged for 89 days on three occasions by the respondent as steno-typist w.e.f. 13.8.1997 to 9.11.1997, 16.1.1998 to 15.4.1998 and 20.1.2000 to 16.1.2001 respectively. The petitioner has challenged her termination on the ground that no notice was served upon her prior to her termination w.e.f. 17.1.2001 as required under section 25-F of the Industrial Disputes Act, 1947.

12. In support of her claim petitioner stepped into the witness box as PW-1 and has categorically deposed all the facts pleaded by her in the claim petition that she was appointed on three occasions for 89 days respectively by the respondent. Her appointment letters are Ex. RA, Ex. RB and Ex. RC. Ex. RD is the copy of letter asking her that her services shall stand dispensed with after 16.1.2001.

13. The aforesaid facts have not been disputed by the respondent as is evidence from the testimony of RW-1 Ms. Lalita Kumari, SDO who appeared on behalf of respondent in the witness box. So, it stands established that petitioner was specifically appointed for 89 days, in view of her appointment letters Ex. RA to Ex. RC. These letters clearly indicate the terms and conditions for 89 days. Therefore, after the end of 89 days petitioner was having no right to continue on the same post. This law has been laid down by the Hon'ble Supreme Court in the matters of 2006 LLR 1233 SC and (2006) 6 SCC 221.

14. On behalf of petitioner, it was argued that petitioner had completed 240 days in a calendar year from 13.8.1997 to 16.1.2001. After due consideration, I am not in agreement with the said submission advanced by Ld. Counsel for petitioner. Petitioner was lastly engaged for 89 days w.e.f. 20.10.2000 to 16.1.2001 and prior to that she was engaged w.e.f. 16.1.1998 to 15.4.1998. That means petitioner remained out of job from 16.4.1998 to 19.10.2000 for about 2 ½ years. This break cannot be termed as notional and hypothetical break in order to defeat the provisions of Industrial Disputes Act, 1947. It shows that during aforesaid 2 ½ years no work was available with the respondent that is why the petitioner was not engaged. In order to get the benefits of section 25-F of the Industrial Disputes Act, 1947, petitioner was to show that she completed 240 days in a calendar

year prior to her termination w.e.f. 17.1.2001. But her testimony is revealing that she only worked for 89 days in a calendar year prior to her termination w.e.f. 17.1.2001. As the result, the petitioner is not entitled to get the benefits of section 25-F of Industrial Disputes Act under which prior to her termination one month's notice was required to be served upon her or respondent was required to pay the wages of one month's and compensation to the petitioner.

15. The petitioner has also alleged that respondent has violated the principle of last come first go as junior workmen to her were retained and respondent also engaged junior workman. In her petition, petitioner has stated that Shri Manjeet Singh junior to her was retained by the respondent after her termination. Ex. PB is the record regarding the engagement of Manjeet Singh which is revealing that he was engaged for the first time for 89 days w.e.f. 1.7.1997 to 27.9.1997. Then he was engaged for 85 days in 1997/1998 and for 89 days w.e.f. 1.8.1998 to 28.10.1998. Ex. PC is also record showing the details of the engagements of Shri Manjeet Singh. The record of Manjeet Singh is also revealing that there was no break of 2 ½ years in his engagements and he completed 240 days in a calendar year. So, his case was different from the case of petitioner. Moreover, he was not engaged as a steno-typist, so, his case cannot be equated with the case of petitioner who was engaged as steno-typist. On the top of it, Shri Manjeet Singh was engaged in IPH Division Jubbal whereas petitioner was engaged in IPH Division No.1, Shimla.

16. Learned Dy. DA appearing on behalf of respondent has stated at Bar that the seniority list is drawn Division wise and workmen of one Division cannot be considered for reemployment in another Division. Therefore, the engagement of Manjeet Singh would not help petitioner in any manner whatsoever.

17. Respondent produced in evidence the muster roll of one Manju Devi Ex. RZ revealing that she was engaged as a beldar w.e.f. 5.10.1998 to 22.10.1999. Again petition cannot be equated with the beldar because petitioner was engaged as steno-typist.

18. Apart from aforesaid evidence there is no other evidence on record to reveal that any steno typist junior to petitioner was retained in IPH Division No.1 Shimla or fresh steno-typist was engaged in the same Division by the respondent after the termination of petitioner w.e.f. 17.1.2001. Consequently, I do not find any violation of section 25-G and 25-H of the Industrial Disputes Act, 1947.

19. Hence, in the light of my aforesaid discussion, the termination of petitioner w.e.f. 17.1.2001 cannot be termed as illegal and against the provisions of Industrial Disputes Act, 1947. Hence, point no.1 is decided against the petitioner.

Point No. 2

20. For the reasons while discussing point no. 1 the termination of petitioner is not illegal, hence she is not entitled to any service benefits. Consequently, this issue is also decided against the petitioner.

Relief

For the reasons recorded hereinabove, the claim petition is dismissed and the petitioner is not entitled to any service benefit and as such the reference is decided accordingly against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File after completion be consigned to records.

Announced in the open court today on this 27th Day of April, 2013 in the presence of parties.

By order,
Sd/-

*Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.*

Ref 30/10

Sh. Umesh Prasad V/s M/s Deepak Spinner ltd. Baddi.
27/4/2013

Present : None for petitioner
Miss. Meena Thakur Adv. Vice Csl for respondent.

Case called twice but none appear in behalf of petitioner. It is 11.05 am, be called after lunch.

By order,
Sd/-

*Presiding Judge,
Labour Court, Shimla.*

Case called after lunch
27.4.2013

Present : None for the petitioner
Ms. Meena Thakur, Adv vice csl for respondent.

Case called again but none is present on behalf of petitioner despite service. It is 2.50 PM.

The following reference was received from the appropriate government for adjudication:

“Whether the action of the Factory manager M/s Deepak Spinners Ltd., baddi Tehsil Nalagarh, District Solan HP not allowing Shri Umesh Prasad S/o Shri Ram Janam w.e.f. 25.5.2006 after his return from illness and thus retrenching him is legal and justified? If not what relief of back wages, seniority and past service benefits the above aggrieved workman is entitled to?”

The petitioner was required to file the claim petition in support of his contention in order to adjudicate the aforesaid reference. The reference was received from Labour Commissioner, Shimla who has sent one copy of this reference to the petitioner which shows that petitioner was having the information regarding present reference. On the top of it, this court also sent notices to the petitioner to appear before this court. But neither the petitioner nor any advocate/Representative on his behalf appeared despite service which goes to suggest that he is not interested to file any claim or to get the aforesaid reference adjudicated upon.

In the absence of any claim and evidence on behalf of petitioner the aforesaid reference is decided against the petitioner as it cannot be held that the retrenchment of petitioner by the respondent w.e.f. 25.5.2006 is illegal and unjustified. Consequently, the petitioner is not entitled to

any service benefits from this Court. The reference is decided accordingly against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

By order,
Sd/-

Announced:
27/4/2013

*Presiding Judge,
Labour Court, Shimla.*

Ref. 72 of 2010

Smt. Paramjeet Kaur V/S M/s Torgeu Pharmaceuticals Ltd.Baddi.
29/4/2013

Present: None for petitioner
Shri G.S Walia, AR for respondent.

Case is called twice but none is present on behalf of petitioner. The petitioner was ordered to be served by way of publication .Despite publication neither petitioner nor any representative on her behalf is present. The following reference was received from the appropriate government for adjudication:

“Whether the termination of the service of Smt. Paramjeet Kaur w/o Shri Suresh Kumar by Factory Manager M/s Torque Pharmaceuticals Pvt. Ltd., EPIP-1 Jharmajri, Baddi, Tehsil Nalagarh, District Solan HP w. e. f 22/12/2006 without complying with the provisions of the industrial disputes act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

The petitioner was required to file the claim petition in support of her contention in order to adjudicate the aforesaid reference. The reference was received from Labour Commissioner, Shimla who has sent one copy of this reference to the petitioner which shows that petitioner was having the information regarding present reference. On the top of it, this court also sent notice to the petitioner to appear before this court. But neither the petitioner nor any advocate/Representative on her behalf appeared despite service through publication which goes to suggest that she is not interested to file any claim or to get the aforesaid reference adjudicated upon.

In the absence of any claim and evidence on behalf of petitioner the aforesaid reference is decided against the petitioner as it cannot be held that the termination of petitioner by the respondent w. e. f 22/12/2006 is illegal and unjustified. Consequently, the Petitioner is not entitled to any service benefits from this Court. The reference is decided accordingly against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
29/4/2013

By order,
Sd/-

*Presiding Judge,
Labour Court, Shimla.*

Ref 99 of 2009

Kumari Uma Rani V/s M/s Torgeu Pharmaceuticals Ltd.Baddi.
29/4/2013

Present: None for petitioner

Shri G. S. Walia, AR for respondent.

Case is called trice but none is present on behalf of petitioner. The petitioner was ordered to be served by way of publication .Despite publication neither petitioner nor any representative on her behalf is present. The following reference was received from the appropriate government for adjudication:

“Whether the termination of the service of Smt. Paramjeet kaur W/o Shri Suresh Kumar by Factory Manager M/s Torque Pharmaceuticals Pvt. Ltd., EPIP-1 Jharmajri, Baddi, Tehsil Nalagarh, District Solan HP w. e. f 22/12/2006 without complying with the provisions of the industrial disputes act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

The petitioner was required to file the claim petition in support of her contention in order to adjudicate the aforesaid reference. The reference was received from Labour Commissioner, Shimla who has sent one copy of this reference to the petitioner which shows that petitioner was having the information regarding present reference. On the top of it, this court also sent notice to the petitioner to appear before this court. But neither the petitioner nor any advocate/Representative on her behalf appeared despite service through publication which goes to suggest that she is not interested to file any claim or to get the aforesaid reference adjudicated upon.

In the absence of any claim and evidence on behalf of petitioner the aforesaid reference is decided against the petitioner as it cannot be held that the termination of petitioner by the respondent w. e. f 22/12/2006 is illegal and unjustified. Consequently, the Petitioner is not entitled to any service benefits from this Court. The reference is decided accordingly against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
29/4/2013

By order,
Sd/-
*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH

Ref. No. 7 of 2005.
Instituted on. 5.2.2005.
Decided on 26.4.2013.

Mohan Singh s/o Shri Pritam Singh R/o Village Bashva, P.O Bela, Tehsil Shillai, District Sirmour, HP.

Vs.

Executive Engineer, HPSEB Division, Paonta Sahib, District Sirmour, HP. . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri A. K. Gupta, Advocate.

For respondent : Shri O. P. Chauhan, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of services of Shri Mohan Singh S/o Shri Pritam Singh, workman by the Executive engineer, HPSEB Division Paonta Sahib, District Sirmour, HP w.e.f. 28.1.2001 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits Shri Mohan Singh is entitled to?”

2. The petitioner filed the claim petition stating that he was engaged by the respondent as daily wager in November, 1998 and he worked till Jan., 2001. Petitioner stated that he completed 240 days in each calendar year but no notice was served upon him before termination. Consequently, he challenged his termination contrary of the provisions of section 25-F of Industrial Disputes Act, 1947.

3. The respondent contested the claim petition by filing a reply wherein preliminary objection as to maintainability and cause of action were taken. The respondent also took objection that the petitioner was not a workman.

On merits, respondent stated that the petitioner only worked for 83 days in 1998, thereafter, he worked on the basis of part time worker w.e.f. 2.11.1998 to 30.11.1999 and 1.1.2000 to 19.1.2001. He never completed 240 days in a calendar year. The petitioner was engaged for specific work and on the completion of said work, the services of petitioner came to an end, hence, there was no need to serve notice under section 25-F of Industrial Disputes Act, 1947. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied preliminary objection taken by the respondent in reply and further reasserted the facts already stated by him in claim petition

5. On the pleadings of the parties, the following issues were framed:—

1. Whether the services of the petitioner were illegally terminated by the respondent? If so, its effect? . .OPP.

2. If issue no. 1 is proved in affirmative to what relief the petitioner is entitled to? . .OPP.

3. Whether the petition is not maintainable as the petitioner has no cause of action? . .OPR.

4. Relief.

6. Vide separate award dated 24.8.2007 my Learned Predecessor allowed the claim petition and consequently the reference was decided in favour of petitioner. The aforesaid issues were decided as under:

Issue No. 1 : Yes

Issue No. 2 : Entitled for reinstatement

Issue No. 3 : No

Relief : Reference allowed as per operative part of the award.

7. As per said award the petitioner was ordered to be reinstated forthwith without any back wages or seniority. Since, back wages and seniority were denied to the petitioner, therefore, he filed CWP No. 2945 of 2008 before the Hon'ble High Court which was decided on 13.7.2010. The writ petition was allowed and the order/award passed by this Court was partly set aside to the extent that petitioner will not be entitled to back wages and seniority. The case was remanded to this Court with the direction to pass a speaking order with regard to the claim of petitioner for back wages and seniority.

8. Hence, in the light of order passed by the Hon'ble High Court in CWP No. 2945 of 2008 dated 13th July, 2010, the earlier order/award passed by this Court dated 24.8.2007 was upheld as far as the order to reinstate the petitioner forthwith is concerned. That means the termination order of petitioner dated 28.1.2001 passed by respondent stands set aside and petitioner is entitled to be reinstated in service forthwith.

9. The sole question for determination is whether the petitioner is entitled to back wages and seniority.

10. I have heard both the parties and gone through the record of the case carefully.

11. Since, the termination order of petitioner dated 28.1.2001 has been set aside and he has been ordered to be reinstated forthwith, therefore, the petitioner is in service w.e.f. 28.1.2001 till the date of his superannuation. So, he is entitled to the continuity in service as well as seniority. The benefit of seniority cannot be denied to the petitioner especially when his termination order dated 28.1.2001 is illegal having been passed in violation of the provisions of Industrial Disputes Act, 1947. Consequently, I am of the opinion that petitioner is entitled to seniority and continuity in service till the date of his superannuation.

12. As regard to the claim of petitioner for back wages, after due consideration, the petitioner is not entitled to full back wages. I do not find any specific evidence on record that during the disputed period petitioner was gainfully employed. At the same time there is no evidence to suggest that he was not gainfully employed. Both the parties have led no evidence in this regard. Thus, taking into account all the facts and circumstances of the case, I am of the opinion that petitioner is entitled to back wages @ 25%.

13. Accordingly, for the aforesaid reasons, the claim petition filed by the petitioner is allowed and the reference is answered accordingly to the effect that his termination order dated 28.1.2001 stands set aside and he is ordered to be reinstated in service forthwith with continuity and seniority till he attains the age of superannuation. Further, petitioner is entitled to the back wages to the extent of 25%.

14. This order/award shall be part of the earlier award passed by this Court dated 24.8.2007 and both these awards shall be taken into account together for all legal intents and purposes. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26th Day of April, 2013.

By order,
Sd/-
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH

Ref. No. 34 of 2010.
Instituted on. 12.04.2010.
Decided on 12.4.2013.

Bharat Singh S/o Shri Nokh Ram R/o Village Dugyana P.O Okhru, Tehsil & District Shimla, H.P. . . Petitioner.

Vs.

The Member Secretary, Special Area Development Authority, Shoghi Town Planning Office, Block No. 32A, Kasumpati Shimla-9 . . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Peeyush Verma, Advocate.
For respondent : Shri Surender Thakur, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of the services of Shri Bharat Singh s/o Shri Nokh Ram by the Member Secretary, Special Area Development Authority, Shoghi Town Planning Office, Block No. 32A, Kasumpati Shimla-9 in the year, 2008 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to?”

2. The petitioner filed the claim petition stating that he was engaged as Chainman by the respondent in 2001. The petitioner worked upto 2008 when his services were orally terminated. Throughout this period, he completed minimum 240 days in each calendar year. However, initially he was given notional breaks by the respondent but he remained in continuous service. No notice was served upon him and no enquiry was conducted against him. Consequently petitioner prayed to set aside his termination and to reinstate him with full back wages and consequential service benefits. He also prayed that he be regularized w.e.f. 2001.

3. The respondent contested the claim petition by filing a reply wherein preliminary objections as to maintainability, want of privity of contract, non-joinder of necessary parties and cause of action were taken. On merits, respondent stated that the petitioner was not a workman under the Industrial Disputes Act, so, he was not entitled to get any relief. The petitioner was not entitled for the reinstatement and regularization as prayed for. In fact, the petitioner was appointed as a Chainman in 2001 on contractual basis for 89 days.

It was denied that petitioner worked till 2008 and he completed 240 days in each calendar year. Earlier the petitioner remained absent from his duties w.e.f. 6.12.2002 without any intimation to the respondent and in 2004 he moved an application for renewal of contract and also submitted medical certificate stating that he remained ill for seventeen months. The respondent took lenient view and he was again re-employed on contractual basis in June, 2004 for 89 days. The petitioner again left the job from 25.2.2006 to 30.6.2007 and again moved an application on 31.12.2008 on

the lame excuse that he remained ill during the aforesaid period. In fact, petitioner left the job at his own, so, there was no question of terminating the petitioner. The application of petitioner dated 31.12.2008 was rejected. Consequently, respondent prayed for the dismissal of the petition.

4. No rejoinder was filed. On the pleadings of the parties, the following issues were framed:—

1. Whether the termination of the services of petitioner by the respondent in the year, 2008 is in violation of the provisions of the Industrial Disputes Act, 1947?

. . OPP.

2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to?
. . OPP.

3. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue no. 1 : Yes.

Issue no. 2 : Entitled for reinstatement with seniority and continuity but without back wages.

Relief : Reference answered in negative against the respondent per operative part of award.

Reasons for finding

Issue no. 1.

8. After hearing both the parties and going through the record carefully, I am of the considered opinion that the services of petitioner were wrongly and illegally terminated by the respondent in the year 2008.

9. From the pleadings as well as evidence of both the parties, it stands established that petitioner was initially employed by the respondent in 2001 as a Chainman and he worked till November, 2002. Then petitioner remained absent and for the same he submitted medical certificate which was accepted by the respondent and he was again taken into service in 2004.

Although, the witness of respondent Ms. Prem Lata Chauhan (RW-1) has deposed that petitioner was engaged on contractual basis for 89 days but her testimony itself is revealing that petitioner continued to work under the respondent even after 89 days. Therefore, I am of the opinion that the notional break after 89 days was made only to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947 under which a workman who has completed 240 days in a calendar year cannot be retrenched without serving one month's notice or paying one month's wages or salary. It is settled law that the notional break is illegal as held by the Hon'ble Supreme Court in the matter of (2006) 9 SCC 434.

10. The testimony of petitioner is revealing that from 2004 to February, 2006 he again worked under the respondent and from February, 2006 to June, 2007 he remained ill and could not carry out his work. On behalf of respondent RW-1 Ms. Prem Lata has deposed that for the absence of petitioner from February, 2006 to June/July, 2007, the medical certificate submitted by the petitioner was not accepted. She has further stated that the petitioner was employed as per agreement Ex. R-1 and petitioner had violated the terms and conditions of said agreement. After due consideration, I am not in agreement with the said explanation given by RW-1 Ms. Pre, Lata.

11. As discussed hereinabove the respondent accepted the medical certificate of petitioner for his absence from November, 2002 to June, 2004 and thereafter allowed him to join the duties. This fact goes to establish that petitioner remained on duty from June, 2004 to February, 2006 though with notional breaks but for the aforesaid reasons said notional breaks are not sustainable under law. Hence, it can be safely concluded that petitioner worked for more than 240 days in a calendar year prior to his absence from duty in 2006. So, he could only be retrenched by serving a notice of one month or paying one month's wages and compensation as required under section 25-F of the Industrial Disputes Act, 1947.

12. RW-1 Prem Lata Chauhan has admitted petitioner has submitted medical certificate for his absence from February, 2006 to June, 2007 but said medical certificate was not accepted by the department. She has also admitted that on 7.7.2007 petitioner had given the joining application along-with medical certificate. Her testimony is further revealing that the department did not give any notice to the petitioner and did not conduct any enquiry against the petitioner. The genuineness of medical certificate of the petitioner is not inquired into by the respondent. If respondent could accept the earlier medical certificate of petitioner filed by him for his illness w.e.f. November, 2002 to June, 2004 then I fail to understand why his medical certificate was not be accepted for his illness w.e.f. Feb., 2006 to June, 2007. Before terminating the services of petitioner, respondent should have given a show cause notice to the petitioner for his absence and regarding his illness respondent should have conducted an enquiry.

Since, no such steps were taken by the respondent before terminating the services of petitioner in 2008, therefore, the termination of petitioner is illegal being violative of principles of natural justice.

13. Accordingly, for the aforesaid reasons the termination of services of petitioner by the respondent in 2008 is illegal, hence, this issue is answered in favour of petitioner.

Issue no. 2

14. For the reason recorded hereinabove while discussing issue no.1, the termination of services of petitioner w.e.f. 2008 by the respondent is hereby set aside. As the result, petitioner is entitled for reinstatement with seniority and continuity. However, the petitioner is not entitled to back wages as there is nothing on record to suggest that after 2008 the petitioner was not gainfully employed. Since, the petitioner is sustaining since the date of his termination, therefore, this fact is sufficient to suggest that he is doing some employment and is earning. There is nothing on record to suggest that petitioner is suffering from some ailment. This fact goes to suggest that petitioner is having able body, so, he is having capacity to do manual work. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is partly decided in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 2008 by the respondent is set aside and the petitioner is

ordered to be reinstated in service forthwith with seniority and continuity but without back wages. However, it is made clear that respondent is entitled to initiate action in accordance with law against the petitioner for his absence from Feb., 2006 to June, 2007, if respondent is not accepting the medical certificate of petitioner. The reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 12th Day of April, 2013.

By order,
Sd/-

*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

Ref 75 of 10

Sh. Ramesh Chand V/s Nova Security Service Ltd. Chd.
3/4/2013

Present: None for petitioner
Ms. Asha Pandit, Advocate for respondent.

Case called twice but none is present on behalf of petitioner. Today the case was diced for filing of claim on behalf of petitioner. The following reference was received from appropriate government for adjudication;

“Whether termination of the service of Shri Ramesh Chand S/o Shri Diwan Singh by M/s Nova Security Services Pvt., Ltd., Quite office 14, Sector- 35-A Chd. Who was postd as a driver at M/s wi8ld Flower Hall, on Obroi Resort Ltd., in the Himalyas Chharab, Shimla w.e.f. without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If, not, to what relief of service benefits including reinstatement, compensation and back wages the above worker is entitled to?”

On behalf of petitioner Shri J.R. Sharma, Advocate put appearance and availed so many opportunities to file the claim petition. The record is revealing that Shri H.R. Sharma, Advocate appeared for the first time before this court, on 17.8.2010 and since then for the last more than two years he availed several opportunities to file the claim petition. As per record 30.3.2013 was the last opportunity to file the claim petition. However, on 30/3/2013 Vice Counsel Ms. Meena Thakur put appearance on behalf of petitioner and on her request one more opportunity was granted to file the claim on 3/4/2013 i.e today. But, today neither the petitioner nor his representative or counsel is present. The absence of petitioner is sufficient to suggest that petitioner is not interested to file any claim.

In the absence of any claim petition on behalf of petitioner as well as evidence, it cannot be held that the termination of service of petitioner by the respondent w.e.f 1/7/2008 is without complying with the provisions of Industrial Disputes Act, 1947. Consequently, the reference is answered in affirmative and against the petitioner. The petitioner is not entitled to any relief from this court. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
3/4/2013

By order,
Sd/-

*Presiding Judge,
Labour Court, Shimla.*

Sh. Jai Dev V/s M/s Nova Security Service Ltd. Chd.
3/4/2013

Present: None for petitioner
Ms. Asha Pandit, Advocate for respondent.

Case called twice but none is present on behalf of petitioner. Today the case was duced for filing of claim on behalf of petitioner. The following reference was received from appropriate government for adjudication;

“Whether termination of the service of Shri Ramesh Chand S/o Shri Diwan Singh by M/s Nova Security Services Pvt., Ltd., Quite office 14, Sector- 35-A Chd. Who was postd as a driver at M/s wi8ld Flower Hall, on Obroi Resort Ltd., in the Himalyas Chharab, Shimla w.e.f. without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If, not, to what relief of service benefits including reinstatement, compensation and back wages the above worker is entitled to?”

On behalf of petitioner Shri J. R. Sharma, Advocate put appearance and availed so many opportunities to file the claim petition. The record is revealing that Shri H. R. Sharma, Advocate appeared for the first time before this court, on 17.8.2010 and since then for the last more than two years he availed several opportunities to file the claim petition. As per record 30.3.2013 was the last opportunity to file the claim petition. However, on 30/3/2013 Vice Counsel Ms. Meena Thakur put appearance on behalf of petitioner and on her request one more opportunity was granted to file the claim on 3/4/2013 i.e. today. But, today neither the petitioner nor his representative or counsel is present. The absence of petitioner is sufficient to suggest that petitioner is not interested to file any claim.

In the absence of any claim petition on behalf of petitioner as well as evidence, it cannot be held that the termination of service of petitioner by the respondent w.e.f 1/7/2008 is without complying with the provisions of Industrial Disputes Act, 1947. Consequently, the reference is answered in affirmative and against the petitioner. The petitioner is not entitled to any relief from this court. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
3/4/2013

By order,
Sd/-
*Presiding Judge,
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH

Ref. No. 57 of 2010
Instituted on. 1.5.2010.
Decided on 1.4.2013.

Suresh Kumar S/o Shri Jagdish Chand R/o Village & P.O Utput, Tehsil & District Hamirpur, H.P. . . Petitioner.

V/s

The managing director M/s Nexue Health & Beauty Care Pvt., Ltd. Plot No. 96, EPIP, Phase-1 Jharmajri, Baddi, District Solan, HP. . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, Ar.
For Respondent : Shri Rajeev Sharma, Advocate

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the termination of Shri Suresh Kumar S/o Shri Jagdish Chand by managing Director M/s Nexue Health & Beauty Care Pvt., Ltd. Plot No. 96, EPIP, Phase-1 Jharmajri, Baddi, district Solan, HP. W.e.f. 16.11.2008 without serving chargesheet and without conducting any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, to what relief of back wages, seniority and past service benefits the above aggrieved workman is entitled?”

2. The petitioner filed the claim petition stating that he was employed by the respondent in January, 2008 and served till 16.11.2008 when his services were illegally terminated in violation of section 25-F the Act. The petitioner has completed 240 days in a calendar year and junior to him were also retained by the respondent which is clear violation of the provisions of section 25-F, 25-G and 25-H of the Industrial disputes Act, 1947. It was also stated that before terminating the services of petitioner no enquiry was conducted against him. Consequently, petitioner prayed to set aside his termination and to reinstate him with full back wages and other consequential service benefits.

3. The respondent contested the claim petition by filing reply wherein it was stated that the petitioner joined his duties on 1.8.2008 and thereafter he remained absent from 17.11.2008. He was paid wages @ 3,000/- per month for eight hours and no over work was taken. The petitioner has abandoned the job by remaining absent for more than 10 days continuously. It was further stated that the petitioner has never completed 240 days in twelve calendar months. The service of petitioner were never terminated in fact he abandoned the job at his own. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the averments made by the respondent in reply and further reasserted the facts already stated by him in claim petition.

5. On the Pleadings of the parties the following issues were framed.

1. Whether the termination of the service of Shri suresh Kumar by the management of M/s Nexus Health and Beauty Care w.e.f. 16.11.2008 is illegal and unjustified? . . OPP.
2. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Thereafter, the case was fixed for the evidence of petitioner. Petitioner availed as many as five opportunities to lead evidence. On 1.4.2013 neither petitioner nor any

evidence on his behalf was present. Although, on behalf of petitioner one more opportunity was prayed to lead evidence which was strongly objected to by the respondent.

7. After due consideration, the prayer of petitioner was objected and the petitioner evidence was closed by the order of court.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue no. 1 : No

Relief : Reference answered in affirmative against the petitioner per operative.

Reasons for Findings

Issue no. 1

9. The burden was upon the petitioner to prove that his services were wrongly and illegally terminated by the respondent in violation of the provisions of Industrial Disputes Act, 1947. But petitioner himself did not appear in the Court as a witness and no other evidence was led by him in support of his claim. The absence of petitioner is suggesting that he is not interested to press his claim despite vailing opportunities to lead evidence. In the absence of any evidence, the claim filed by the petitioner is dismissed. As the result, issue no.1 is decided against the petitioner.

Relief

For the reason recorded hereinabove, the claim of petitioner is dismissed and as such the petitioner is not entitled to any relief from this court. As the result the reference is decided accordingly against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on his 1st day of April 2013.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-Cum-
Labour court, Shimla*

Ref. 107/2010

Sh. Jaspreet Singh V/s M/s Synergy Telecommunications (P) Ltd Nalagarh.
1/4/2013

Present: None for the petitioner.
Respondent already ex parte.

File taken up today as the Circuit Court at Nalagarh was postponed from 29/3/2013 to 1/4/2013 vide my separate office order.

Case called twice but none is present on behalf of petitioner. Today the case was fixed for filing of claim on behalf of petitioner.

The following reference was received from appropriate government for adjudication:

“Whether verbal termination of the services of Shri Jaspreet Singh S/o Shri Gurdyal Singh, helper by Managing Director M/s Synergy Telecommunications (Private)Ltd., village Dherowal, P.O Manjholi, Tehsil Nalagarh, District Solan, HP w.e.f. 10/6/2009 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what a back wages, service benefits and relief the above named workman is entitled?”

The petitioner has availed several opportunities to file the claim petition in order to show that he was wrongly terminated by the respondent w.e.f. 10/6/2009 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947. The record is revealing that the reference was received in this court on 27/10/2010 and notice were issued to both the parties.

On behalf of petitioner Shri J. C. Bhardwaj, AR put appearance for the first time on 1/12/2010 and since then, after availing so many opportunities to file claim petition, today none appeared on behalf of the petitioner which goes to suggest that the petitioner is not interested to file any claim petition. Hence, in the absence of any claim petition, the reference is decided against the petitioner and in favour of respondent/ employer as in the absence of any claim and evidence it cannot be held that the service of petitioner w.e.f. 10/6/2009 were wrongly and illegally terminated by the respondent without serving the charge sheet, without holding enquiry and without complying the provisions of the Industrial disputes Act, 1947. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

1/4/2013

*Presiding Judge,
Labour Court, Shimla
Camp at Nalagarh.*

Ref. 59/2009

Shri Darshan Lal V/s G.M Cement Corporation of India Sirmoaur
10/4/2013

Present: Shri A. K. Gupta, Advocate for petitioner.
Respondent no. 1 in person
Respondent no. 2 already ex parte.

Today, Ld. Counsel for petitioner prayed that petitioner did not want to press the claim petition because petitioner was not terminated from the service but he was retired. So, petitioner would be filing fresh demand notice. To this effect statement of petitioner Shri Darshan Lal recorded which was signed by his counsel Shri A. K. Gupta, Advocate. The following reference was received from the appropriate government for adjudication:

“Whether termination of service of Shri Darshan Lal S/o Shri Sita Ram workman by the I) The General manager cement corporation of India, Rajban Cement Factory, Rajban, District sirmour, Hp II) Shri Om Parkash Yadav contractor CCI Rajban Cement Factory Rajban, Paonta Sahib, District Sirmour, H.P w.e.f. 1/6/2006 on the basis of certificate issued on 2/12/2006 by the above contractor without complying

with the provisions of the Industrial disputes Act, 1947 is proper and justified? If not what relief of service/retirement benefits the above aggrieved retired workman is entitled to?"

The petitioner filed the claim petition challenging his termination which was contested by the respondent by filing reply. Since, petitioner has stated not to press his claim and prayed to decide the reference accordingly, therefore, the claim petition filed by the petitioner is hereby dismissed and the reference is answered against the petitioner accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
10/4/2013

By order,
Sd/-
*Presiding Judge,
Labour Court, Shimla,
Camp at Paonta Sahib.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH

Ref. No. 106 of 2010.
Instituted on. 28.9.2010.
Decided on 4.4.2013.

Sanjeev Gautam S/o Shri Satish Kumar R/o Village Khawara, P.O & Tehsil Nurpur, District Kangra, H.P.

.. Petitioner.

Vs.

M/s Ebony & Company Ltd., Plot No. 2/4, Phase-1 EPIP Jharmajri, Baddi, District Solan, HP.

.. Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Ms. Veena Sood, Advocate.
For respondent : Ex parte.

AWARD

The following reference has been received from appropriate government for adjudication:

"Whether the verbal termination of the services of Shri Sasnjeev Gautam S/o Shri Prithvi Chand by the Management of M/s Ebony & Company, Plot No. 2/4, Phase-1, EPIP, Jharmajri, Baddi, District Solan, HP w.e.f. 24.7.2009 without serving chargesheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?"

2. The petitioner filed the claim petition stating that he was engaged by the respondent in May, 2005 on temporary basis and subsequently in July, 2006, he was regularized by the respondent. Initially respondent used to pay him ₹ 3,000/- per month but after June, 2006 his wages were increased to ₹ 5,000/- per month. On 24.7.2009 when petitioner was doing the work of foreman, the respondent verbally terminated him as he was not allowed to enter the gate.

At that time, petitioner had put more than 240 days of continuous service. He was removed from service without serving any notice, therefore, respondent violated the provisions of section 25-F of the Industrial disputes Act, 1947. The petitioner further stated that after his termination respondent retained junior workmen and also engaged fresh workmen. Thus, respondent also violated sections 25-G and 25-H of Industrial Disputes Act, 1947. Hence, petitioner prayed to set aside his termination and to reinstate him with full back wages and other consequential service benefits.

3. The respondent was served but did not put appearance, hence respondent was proceeded against ex parte.

4. The ex parte evidence of petitioner recorded.

5. I have heard Ld. Counsel for petitioner and also gone through the record of the case carefully.

6. The un-rebutted ex parte evidence of petitioner is sufficient to prove that he was employed as a foreman by the respondent in May, 2005 and he was wrongly and illegally terminated on 24.7.2009 without complying with the provisions of Industrial Disputes Act, 1947.

7. The testimony of petitioner is sufficient evidence on record.

He has categorically deposed that he was engaged by respondent in May, 2005 on temporary basis and in June, 2006 he was regularized. He worked for more than 240 days in each calendar year and on 24.7.2009 he was stopped on the gate and he was not allowed to join his duties and thereafter, he was verbally retrenched. This statement of petitioner is sufficient to prove that prior to his verbal retrenchment on 24.7.2009 he had worked for more than 240 days in a calendar year. Therefore, the respondent was under the legal obligation to serve one month's notice or to pay one month's wages and compensation in lieu of said notice to the petitioner as required under section 25-F of Industrial Disputes Act, 1947. Since, no such steps were taken by the respondent, therefore, the retrenchment of petitioner on 24.7.2009 is illegal being against the provisions of section 25-F of Industrial Disputes Act, 1947.

8. Although, the petitioner has also alleged that after his termination, respondent retained junior workmen and also employed fresh workmen, but to this effect, I do not find any evidence on record.

9. The aforesaid discussion has established that the verbal termination of the petitioner by the respondent on 24.7.2009 is against the provisions of section 25-F of the Industrial disputes Act, 1947, hence, the same is liable to be set aside.

10. Consequently, for the aforesaid reasons, the claim petition is allowed and the termination of services of petitioner by the respondent w.e.f. 24.7.2009 is hereby set aside and petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. The reference is

decided in negative accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 4th day of April, 2013.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH

Ref. No. 83 of 2010.
Instituted on. 02.07.2010.
Decided on 12.4.2013.

Diwan Chand s/o Shri Sukh Ram R/o Village Jakhrouda, P.O Pratha, Tehsil Kasauli, District Solan, H.P. . . Petitioner.

Vs.

M/s Asian Electronics Pvt. Ltd., Village Jakhrouda, P.O Pratha, Tehsil Kasauli, District Solan, H.P. . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Y.P. Dhaulta, Advocate.
For respondent : Shri Goverdhan Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the verbal termination of the services of Shri Diwan chand S/o Shri Sukh Ram w.e.f. 30.9.2009 by the management of M/s Asian Electronics Pvt., Ltd., Village Jakhrouda, P.O Pratha, Tehsil Kasauli, District Solan, H.P without serving him chargesheet and without holding enquiry and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned management?”

2. The petitioner filed the claim petition stating that he was engaged as a worker by the respondent and he completed 240 days in a calendar year after his appointment on 19.2.2008. But he was illegally terminated w.e.f. 30.9.2009 without serving any notice and paying any compensation. The petitioner further stated that no domestic enquiry was conducted against him. It was further stated by him that after his termination respondent retained junior workmen namely Darshan and Rishi Paul and also appointed new workmen namely Bhagat Ram, Som Dutt and Shyam Lal. Hence, petitioner challenged his termination in violation of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. Consequently, petitioner prayed to set aside his termination and to reinstate him with back wages and other consequential service benefits.

3. The respondent contested the claim petition by filing a reply wherein preliminary objection as to maintainability was raised. On merits, respondent stated that the petitioner was not a workman and he was appointed as a trainee vide engagement letter dated 1.1.2009 for a period of six months only. The petitioner agreed to the terms and conditions of the agreement. The agreement was extendable for another six months. Thus, the petitioner never remained as a workman under the respondent. Hence, there was no Industrial Dispute involved in this case. The respondent did not violate any provisions of Industrial Disputes Act. As per clause-3 of the agreement, the respondent was at liberty to terminate the contract of appointment as a trainee without giving any reasons or without any notice if the respondent is of the opinion that trainee is not found suitable for the purpose of any post for which he is being trained. As the result, the respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied preliminary objection taken by the respondent in reply and further reasserted the facts already stated by him in claim petition .

5. On the pleadings of the parties, the following issues were framed:-

1. Whether the verbal termination of the services of petitioner by the respondent w.e.f. 30.9.2009 is in violation of the provisions of the Industrial Disputes Act, 1947? . . OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . . OPP.
3. Whether the claim petition is not maintainable? . . OPR.
4. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue no. 1 :	Yes.
Issue no. 2 :	Entitled for reinstatement with seniority and continuity but without back wages.
Issue no. 3 :	No
Relief.	Reference answered in negative against the respondent per operative part of award.

Reasons for finding

Issue no. 1 & 3.

9. Both these issues are interconnected and can be disposed of by a single finding.

10. The respondent has taken the objection that petitioner is not a workman as he was engaged as a trainee by the respondent. Therefore, it has to be seen whether the petitioner is a workman or not.

11. Taking into account the relevant evidence on record to my mind the petitioner is a workman. On behalf of respondent reliance was made on the testimony of RW-1 Ajay Sharma who

tendered in evidence his affidavit Ex. RW-1/A wherein he has deposed that petitioner was engaged as a trainee for six months on contract basis w.e.f. 1.1.2009. The petitioner joined the company and accepted the terms and conditions of the contract and only worked for 211 days.

This witness did not produce in evidence the agreement which was arrived at between the parties allegedly on 1.1.2009 as pleaded by the respondent in reply. Although, the photocopy of agreement has been placed on record but it has not been duly proved.

12. It is admitted case of respondent that in pursuance of agreement dated 1.1.2009, the petitioner joined his duties. RW-1 Ajay Sharma produced in evidence the joining report of petitioner Ex. RW-1/B which is revealing that petitioner accepted the agreement dated 1.1.2009 and joined the respondent company as a helper on 1.2.2009. He further stated that the petitioner agreed to abide by all the terms and conditions and prayed to regularize him. This joining report Ex. RW-1/B is sufficient proof to establish that petitioner joined the respondent company as a helper and not as a trainee.

13. Moreover, the photocopy of the agreement dated 1.1.2009 which is taken into evidence by this Court as mark A is revealing that petitioner was appointed as a trainee for six months which can be extended by another six months by the respondent to acquire the knowledge or skill. That means the petitioner was appointed as an apprentice by the respondent and the dictionary meaning of apprentice is a person learning a trade from a skilled employee. So, clause-1 of the agreement mark A produced on record by the respondent is specific proof to establish that petitioner was engaged as an apprentice by the respondent and section 2(s) of the Industrial Disputes Act, 1947 defines workman which includes an apprentice.

14. Accordingly, in the light of my aforesaid discussion, the petitioner joined the respondent company as a workman. Hence, the objection taken by the respondent that petitioner is not a workman and the claim petition is not maintainable is hereby rejected.

15. The respondent has stated that the petitioner did not complete 240 days in a calendar year prior to his termination, so, he was not entitled to get the benefits of section 25-F of Industrial Disputes Act, 1947. RW-1 Ajay Sharma has also deposed that petitioner only worked for 211 days in the year of 2009, however, petitioner Diwan Chand stepped into the witness box and has deposed that he completed 240 days prior to his termination on 30.9.2009. The petitioner has further deposed that he was appointed by the respondent on 19.2.2008 but he could not produce on record any convincing evidence apart from his bald statement that he was engaged by the respondent on 19.2.2008.

The burden was heavily upon the petitioner to show that he completed 240 days prior to his termination on 30.9.2009, if he intended to get the benefit of section 25-F of Industrial disputes Act, 1947 which requires the continuous service of 240 days in a calendar year for a workman who could not be terminated without serving one month's notice or wages of one months and compensation. Here, Learned Counsel for respondent has rightly relied upon (2005) 5 SCC 100, (2004) 8 SCC 195 and (2004) 8 SCC 161 that burden is upon the claimant workman to show that he has in fact worked for 240 days in the year preceding his termination. Since, this burden could not be discharged by the petitioner, therefore, it is hereby held that there is no violation of section 25-F of Industrial Disputes Act, 1947.

16. At the same time, I am of the opinion that the termination of petitioner is illegal being violative of section 25-H of the Industrial disputes Act, 1947. RW-1 Ajay Sharma in his cross examination has admitted that after the retrenchment of petitioner new workmen were engaged and they have been marked present in the attendance register. Section 25-H of Industrial Disputes Act,

1947 says in case of engaging new workman, the employer shall give an opportunity to the retrenched workman and to offer him re-employment and the retrenched workman shall have preference over the other persons. In this case, no opportunity was given to the petitioner when new workmen were engaged after his termination. Hence, the termination of the services of petitioner w.e.f. 30.9.2009 by the respondent is in violation of section 25-H of the Industrial Disputes Act, 1947 which is not sustainable.

17. Lastly, clause-3 of the agreement dated 1.1.2009 mark-A which is relied by the respondent, is relevant which reads as under:

“The company will be free to terminate your contract of appointment as a trainee even during the period of your training or even during your extended period of training without giving any reasons giving reasons or without any notice if with opinion of the company you are not found suitable of the purpose of the post which you are being trained by the company, or you are found guilty of any type of misconduct or inefficiency or indiscipline”

18. This term of agreement mark A is specific that the respondent company will not terminate any appointee without giving any reasons or without any notice, if the respondent company is of the opinion that the appointee is not found suitable for the purpose of post for which he is being trained or if the appointee is found guilty of any misconduct or inefficiency or indiscipline. It is not the case of the respondent that petitioner was not found suitable of the purpose of post for which he was being trained or he was found guilty of misconduct or inefficiency or indiscipline.

19. Hence, in the light of my aforesaid discussion, the termination of petitioner w.e.f. 30.9.2009 by the respondent is hereby set aside and as such issue no.1 is decided in favour of petitioner whereas issue no.3 is decided against the respondent.

Issue no. 2

20. For the reason recorded hereinabove while discussing issue no.1 & 3, the termination of services of petitioner w.e.f. 30.9.2009 by the respondent is hereby set aside. As the result, petitioner is entitled for reinstatement with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 30.9.2009 by the respondent is set aside and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and as such the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 12th Day of April, 2013.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH

Ref. No. 84 of 2010.
 Instituted on. 02.07.2010.
 Decided on 12.4.2013.

Rattan Singh S/o Shri Bija Ram R/o Village Jakhrouda, P.O Pratha, Tehsil Kasauli, District Solan, H.P. . . Petitioner.

Vs.

M/s Asian Electronics Pvt. Ltd., Village Jakhrouda, P.O Pratha, Tehsil Kasauli, District Solan, H.P. . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Y. P. Dhaulta, Advocate.

For respondent : Shri Goverdhan Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the verbal termination of the services of Shri Rattan Singh S/o Shri Bija Ram w.e.f. 30.9.2009 by the management of M/s Asian Electronics Pvt., Ltd., Village Jakhrouda, P.O Pratha, Tehsil Kasauli, District Solan, H.P without serving him chargesheet and without holding enquiry and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned management?”

2. The petitioner filed the claim petition stating that he was engaged as a worker by the respondent and he completed 240 days in a calendar year after his appointment on 19.2.2008. But he was illegally terminated w.e.f. 30.9.2009 without serving any notice and paying any compensation. The petitioner further stated that no domestic enquiry was conducted against him. It was further stated by him that after his termination respondent retained junior workmen namely Darshan and Rishi Paul and also appointed new workmen namely Bhagat Ram, Som Dutt and Shyam Lal. Hence, petitioner challenged his termination in violation of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. Consequently, petitioner prayed to set aside his termination and to reinstate him with back wages and other consequential service benefits.

3. The respondent contested the claim petition by filing a reply wherein preliminary objection as to maintainability was raised. On merits, respondent stated that the petitioner was not a workman and he was appointed as a trainee vide engagement letter dated 1.1.2009 for a period of six months only. The petitioner agreed to the terms and conditions of the agreement. The agreement was extendable for another six months. Thus, the petitioner never remained as a workman under the respondent. Hence, there was no Industrial Dispute involved in this case. The respondent did not violate any provisions of Industrial Disputes Act. As per clause-3 of the agreement, the respondent was at liberty to terminate the contract of appointment as a trainee without giving any reasons or without any notice if the respondent is of the opinion that trainee is not found suitable for the purpose of any post for which he is being trained. As the result, the respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied preliminary objection taken by the respondent in reply and further reasserted the facts already stated by him in claim petition

5. On the pleadings of the parties, the following issues were framed:—

1. Whether the verbal termination of the services of petitioner by the respondent w.e.f. 30.9.2009 is in violation of the provisions of the Industrial Disputes Act, 1947? . . OPP.
2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . . OPP.
3. Whether the claim petition is not maintainable? . . OPR.
4. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue no. 1 : Yes.
 Issue no. 2 : Entitled for reinstatement with seniority and continuity but without back wages.
 Issue no. 3 : No.
 Relief : Reference answered in negative against the respondent per operative part of award.

Reasons for finding

Issue no. 1 & 3.

9. Both these issues are interconnected and can be disposed of by a single finding.

10. The respondent has taken the objection that petitioner is not a workman as he was engaged as a trainee by the respondent. Therefore, it has to be seen whether the petitioner is a workman or not.

11. Taking into account the relevant evidence on record to my mind the petitioner is a workman. On behalf of respondent reliance was made on the testimony of RW-1 Ajay Sharma who tendered in evidence his affidavit Ex. RW-1/A wherein he has deposed that petitioner was engaged as a trainee for six months on contract basis w.e.f. 1.1.2009. The petitioner joined the company and accepted the terms and conditions of the contract and only worked for 211 days. This witness did not produce in evidence the agreement which was arrived at between the parties allegedly on 1.1.2009 as pleaded by the respondent in reply. Although, the photocopy of agreement has been placed on record but it has not been duly proved.

12. It is admitted case of respondent that in pursuance of agreement dated 1.1.2009, the petitioner joined his duties. RW-1 Ajay Sharma produced in evidence the joining report of petitioner Ex. RW-1/B which is revealing that petitioner accepted the agreement dated 1.1.2009 and

joined the respondent company as a helper on 1.2.2009. He further stated that the petitioner agreed to abide by all the terms and conditions and prayed to regularize him. This joining report Ex. RW-1/B is sufficient proof to establish that petitioner joined the respondent company as a helper and not as a trainee.

13. Moreover, the photocopy of the agreement dated 1.1.2009 which is taken into evidence by this Court as mark A is revealing that petitioner was appointed as a trainee for six months which can be extended by another six months by the respondent to acquire the knowledge or skill. That means the petitioner was appointed as an apprentice by the respondent and the dictionary meaning of apprentice is a person learning a trade from a skilled employee. So, clause-1 of the agreement mark A produced on record by the respondent is specific proof to establish that petitioner was engaged as an apprentice by the respondent and section 2(s) of the Industrial Disputes Act, 1947 defines workman which includes an apprentice.

14. Accordingly, in the light of my aforesaid discussion, the petitioner joined the respondent company as a workman. Hence, the objection taken by the respondent that petitioner is not a workman and the claim petition is not maintainable is hereby rejected.

15. The respondent has stated that the petitioner did not complete 240 days in a calendar year prior to his termination, so, he was not entitled to get the benefits of section 25-F of Industrial Disputes Act, 1947. RW-1 Ajay Sharma has also deposed that petitioner only worked for 211 days in the year of 2009, however, petitioner Rattan Singh stepped into the witness box and has deposed that he completed 240 days prior to his termination on 30.9.2009.

The petitioner has further deposed that he was appointed by the respondent on 19.2.2008 but he could not produce on record any convincing evidence apart from his bald statement that he was engaged by the respondent on 19.2.2008. The burden was heavily upon the petitioner to show that he completed 240 days prior to his termination on 30.9.2009, if he intended to get the benefit of section 25-F of Industrial disputes Act, 1947 which requires the continuous service of 240 days in a calendar year for a workman who could not be terminated without serving one month's notice or wages of one months and compensation. Here, Learned Counsel for respondent has rightly relied upon (2005) 5 SCC 100, (2004) 8 SCC 195 and (2004) 8 SCC 161 that burden is upon the claimant workman to show that he has in fact worked for 240 days in the year preceding his termination. Since, this burden could not be discharged by the petitioner, therefore, it is hereby held that there is no violation of section 25-F of Industrial Disputes Act, 1947.

16. At the same time, I am of the opinion that the termination of petitioner is illegal being violative of section 25-H of the Industrial disputes Act, 1947. RW-1 Ajay Sharma in his cross examination has admitted that after the retrenchment of petitioner new workmen were engaged and they have been marked present in the attendance register. Section 25-H of Industrial Disputes Act, 1947 says in case of engaging new workman, the employer shall give an opportunity to the retrenched workman and to offer him re-employment and the retrenched workman shall have preference over the other persons. In this case, no opportunity was given to the petitioner when new workmen were engaged after his termination. Hence, the termination of the services of petitioner w.e.f. 30.9.2009 by the respondent is in violation of section 25-H of the Industrial Disputes Act, 1947 which is not sustainable.

17. Lastly, clause-3 of the agreement dated 1.1.2009 mark-A which is relied by the respondent, is relevant which reads as under:

“The company will be free to terminate your contract of appointment as a trainee even during the period of your training or even during your extended period of training

without giving any reasons giving reasons or without any notice if with opinion of the company you are not found suitable of the purpose of the post which you are being trained by the company, or you are found guilty of any type of misconduct or inefficiency or indiscipline"

18. This term of agreement mark A is specific that the respondent company will not terminate any appointee without giving any reasons or without any notice, if the respondent company is of the opinion that the appointee is not found suitable for the purpose of post for which he is being trained or if the appointee is found guilty of any misconduct or inefficiency or indiscipline. It is not the case of the respondent that petitioner was not found suitable of the purpose of post for which he was being trained or he was found guilty of misconduct or inefficiency or indiscipline.

19. Hence, in the light of my aforesaid discussion, the termination of petitioner w.e.f. 30.9.2009 by the respondent is hereby set aside and as such issue no.1 is decided in favour of petitioner whereas issue no.3 is decided against the respondent.

Issue no. 2

20. For the reason recorded hereinabove while discussing issue no.1 & 3, the termination of services of petitioner w.e.f. 30.9.2009 by the respondent is hereby set aside. As the result, petitioner is entitled for reinstatement with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 30.9.2009 by the respondent is set aside and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and as such the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 12th Day of April, 2013.

By order,
Sd/-

*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH

Ref. No. 85 of 2010.
Instituted on. 02.07.2010.
Decided on 12.4.2013.

Sadhu Ram S/o Shri Khayali Ram R/o Village Jakhrouda, P.O Pratha, Tehsil Kasauli, District Solan, H.P. . . Petitioner.

Vs.

M/s Asian Electronics Pvt. Ltd., Village Jakhrouda, P.O Pratha, Tehsil Kasauli, District Solan, H.P.
 . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Y. P. Dhaulta, Advocate.

For respondent : Shri Goverdhan Sharma, Advocate.

AWARD

The following reference has been received from appropriate government for adjudication:

“Whether the verbal termination of the services of Shri Sadhu Ram S/o Shri Khayali Ram w.e.f. 30.9.2009 by the management of M/s Asian Electronics Pvt., Ltd., Village Jakhrouda, P.O Pratha, Tehsil Kasauli, District Solan, H.P without serving him chargesheet and without holding enquiry and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned management?”

2. The petitioner filed the claim petition stating that he was engaged as a worker by the respondent and he completed 240 days in a calendar year after his appointment on 19.2.2008. But he was illegally terminated w.e.f. 30.9.2009 without serving any notice and paying any compensation. The petitioner further stated that no domestic enquiry was conducted against him. It was further stated by him that after his termination respondent retained junior workmen namely Darshan and Rishi Paul and also appointed new workmen namely Bhagat Ram, Som Dutt and Shyam Lal. Hence, petitioner challenged his termination in violation of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. Consequently, petitioner prayed to set aside his termination and to reinstate him with back wages and other consequential service benefits.

3. The respondent contested the claim petition by filing a reply wherein preliminary objection as to maintainability was raised. On merits, respondent stated that the petitioner was not a workman and he was appointed as a trainee vide engagement letter dated 1.1.2009 for a period of six months only. The petitioner agreed to the terms and conditions of the agreement. The agreement was extendable for another six months. Thus, the petitioner never remained as a workman under the respondent. Hence, there was no Industrial Dispute involved in this case. The respondent did not violate any provisions of Industrial Disputes Act. As per clause-3 of the agreement, the respondent was at liberty to terminate the contract of appointment as a trainee without giving any reasons or without any notice if the respondent is of the opinion that trainee is not found suitable for the purpose of any post for which he is being trained. As the result, the respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied preliminary objection taken by the respondent in reply and further reasserted the facts already stated by him in claim petition.

5. On the pleadings of the parties, the following issues were framed:—

1. Whether the verbal termination of the services of petitioner by the respondent w.e.f. 30.9.2009 is in violation of the provisions of the Industrial Disputes Act, 1947?
 . . OPP.

2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . . OPP.

3. Whether the claim petition is not maintainable? . . OPR.

4. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

Issue no. 1 : Yes.
 Issue no. 2 : Entitled for reinstatement with seniority and continuity but without back wages.
 Issue no. 3 : No
 Relief : Reference answered in negative against the respondent per operative part of award.

Reasons for finding

Issue no. 1 & 3.

9. Both these issues are interconnected and can be disposed of by a single finding.

10. The respondent has taken the objection that petitioner is not a workman as he was engaged as a trainee by the respondent. Therefore, it has to be seen whether the petitioner is a workman or not.

11. Taking into account the relevant evidence on record to my mind the petitioner is a workman. On behalf of respondent reliance was made on the testimony of RW-1 Ajay Sharma who tendered in evidence his affidavit Ex. RW-1/A wherein he has deposed that petitioner was engaged as a trainee for six months on contract basis w.e.f. 1.1.2009. The petitioner joined the company and accepted the terms and conditions of the contract and only worked for 211 days. This witness did not produce in evidence the agreement which was arrived at between the parties allegedly on 1.1.2009 as pleaded by the respondent in reply. Although, the photocopy of agreement has been placed on record but it has not been duly proved.

12. It is admitted case of respondent that in pursuance of agreement dated 1.1.2009, the petitioner joined his duties. RW-1 Ajay Sharma produced in evidence the joining report of petitioner Ex. RW-1/B which is revealing that petitioner accepted the agreement dated 1.1.2009 and joined the respondent company as a helper on 1.2.2009. He further stated that the petitioner agreed to abide by all the terms and conditions and prayed to regularize him. This joining report Ex. RW-1/B is sufficient proof to establish that petitioner joined the respondent company as a helper and not as a trainee.

13. Moreover, the photocopy of the agreement dated 1.1.2009 which is taken into evidence by this Court as mark A is revealing that petitioner was appointed as a trainee for six months which can be extended by another six months by the respondent to acquire the knowledge or skill. That means the petitioner was appointed as an apprentice by the respondent and the dictionary meaning of apprentice is a person learning a trade from a skilled employee. So, clause-1 of the agreement

mark A produced on record by the respondent is specific proof to establish that petitioner was engaged as an apprentice by the respondent and section 2(s) of the Industrial Disputes Act, 1947 defines workman which includes an apprentice.

14. Accordingly, in the light of my aforesaid discussion, the petitioner joined the respondent company as a workman. Hence, the objection taken by the respondent that petitioner is not a workman and the claim petition is not maintainable is hereby rejected.

15. The respondent has stated that the petitioner did not complete 240 days in a calendar year prior to his termination, so, he was not entitled to get the benefits of section 25-F of Industrial Disputes Act, 1947. RW-1 Ajay Sharma has also deposed that petitioner only worked for 211 days in the year of 2009, however, petitioner Sadhu Ram stepped into the witness box and has deposed that he completed 240 days prior to his termination on 30.9.2009. The petitioner has further deposed that he was appointed by the respondent on 19.2.2008 but he could not produce on record any convincing evidence apart from his bald statement that he was engaged by the respondent on 19.2.2008. The burden was heavily upon the petitioner to show that he completed 240 days prior to his termination on 30.9.2009, if he intended to get the benefit of section 25-F of Industrial disputes Act, 1947 which requires the continuous service of 240 days in a calendar year for a workman who could not be terminated without serving one month's notice or wages of one months and compensation. Here, Learned Counsel for respondent has rightly relied upon (2005) 5 SCC 100, (2004) 8 SCC 195 and (2004) 8 SCC 161 that burden is upon the claimant workman to show that he has in fact worked for 240 days in the year preceding his termination. Since, this burden could not be discharged by the petitioner, therefore, it is hereby held that there is no violation of section 25-F of Industrial Disputes Act, 1947.

16. At the same time, I am of the opinion that the termination of petitioner is illegal being violative of section 25-H of the Industrial disputes Act, 1947. RW-1 Ajay Sharma in his cross examination has admitted that after the retrenchment of petitioner new workmen were engaged and they have been marked present in the attendance register. Section 25-H of Industrial Disputes Act, 1947 says in case of engaging new workman, the employer shall give an opportunity to the retrenched workman and to offer him re-employment and the retrenched workman shall have preference over the other persons. In this case, no opportunity was given to the petitioner when new workmen were engaged after his termination. Hence, the termination of the services of petitioner w.e.f. 30.9.2009 by the respondent is in violation of section 25-H of the Industrial Disputes Act, 1947 which is not sustainable.

17. Lastly, clause-3 of the agreement dated 1.1.2009 mark-A which is relied by the respondent, is relevant which reads as under:

"The company will be free to terminate your contract of appointment as a trainee even during the period of your training or even during your extended period of training without giving any reasons giving reasons or without any notice if with opinion of the company you are not found suitable of the purpose of the post which you are being trained by the company, or you are found guilty of any type of misconduct or inefficiency or indiscipline"

18. This term of agreement mark A is specific that the respondent company will not terminate any appointee without giving any reasons or without any notice, if the respondent company is of the opinion that the appointee is not found suitable for the purpose of post for which he is being trained or if the appointee is found guilty of any misconduct or inefficiency or indiscipline. It is not the case of the respondent that petitioner was not found suitable of the purpose of post for which he was being trained or he was found guilty of misconduct or inefficiency or indiscipline.

19. Hence, in the light of my aforesaid discussion, the termination of petitioner w.e.f. 30.9.2009 by the respondent is hereby set aside and as such issue no.1 is decided in favour of petitioner whereas issue no.3 is decided against the respondent.

Issue no. 2

20. For the reason recorded hereinabove while discussing issue no.1 & 3, the termination of services of petitioner w.e.f. 30.9.2009 by the respondent is hereby set aside. As the result, petitioner is entitled for reinstatement with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

Relief

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 30.9.2009 by the respondent is set aside and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and as such the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 12th Day of April, 2013.

By order,
Sd/-
*Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.*

HOME DEPARTMENT

NOTIFICATION

Shimla-2, 06th June, 2013

No. Home-B (B) 15-5/2003-HC.—In exercise of the powers conferred by Sub- Section (i) of Section 20 read with Section 21 of the Code of Criminal Procedure, 1973, the Governor, Himachal Pradesh is pleased to appoint the following officers as Executive Magistrate to exercise the powers of Executive Magistrate within their respective jurisdiction in view of 2-Mandi Lok Sabha Bye-Elections 2013 till the completion of process of Election.

Sr. No.	Name and Designations of the Officers	Place of posting
22-Manali Assembly Constituency :		
1.	Sh. Gulab Chand Bains, BDO	Naggar
2.	Capt. Randheer Singh Salhuria, Director	ABVIM& AS, Manali
3.	Sh. Mahaveer Singh Thakur, Dy Director	ABVIM & AS, Manali
4.	Er. Vidya Sagar Thakur, Sr. Executive Engineer	HPSEBL Manali
5.	Sh. Sat Pal Mehta, Director Fisheries	Patlikuhal
6.	Sh. P. P. Kaistha, Principal	GDC Haripur
23- Kullu Assembly Constituency :		
1.	Sh. Ashwani Kumar, RTO	Kullu
2.	Miss Krishna Negi, RTO (F)	Kullu

3.	Smt. Shashi Thakur, ASO	Kullu
4.	Sh. Chandan Kapoor, Tehsildar (R)	Kullu
5.	Sh. Lal Chand Shastri, Tehsildar, O/o Assistant Settlement Officer.	Kullu
6.	Sh. Pradeep Sharma, Deputy Director, Elementary Education	Kullu

24-Banjar Assembly Constituency :

1.	Sh. Manohar Lal Naib-Tehsildar	Banjar
2.	Sh. Jai Gopal Sharma, Naib-Tehsildar O/o LAO	Bihali
3.	Er. B.L. Gupta, XEN, I&PH	Shamshi Division
4.	Er. G.C. Gupta, XEN HPPWD Division No. II	Kullu
5.	Sh. Karam Singh Associate Professor, GDC	Kullu
6.	Sh. Surat Thakur, Asstt. Professor, GDC	Banjar
7.	Sh. Raj Kumar, Associate Professor, GDC	Kullu

25- Anni (SC) Assembly Constituency :

1.	Sh. Rakesh Bisht, BDO	Anni
2.	Sh. Manohar Lal Negi, BDO	Nirmand
3.	Sh. Satya Pal Verma, CDPO	Neether
4.	Sh. Anil Kumar Sharma, XEN, HPPWD	Nirmand
5.	Sh. S.P. Lohia, XEN I&PH Division	Anni
6.	Sh. A.K. Tiwari, XEN HPSEB Ltd. Division	Anni

The Governor of Himachal Pradesh is further pleased to order that the above mentioned officers shall exercise the powers of Executive Magistrate under the supervision and control of the District Magistrate/Sub Divisional Magistrate of the concerned District/Sub Division in whose jurisdiction their local area falls.

By order,
Sd/-
Chief Secretary (Home).

**GENERAL ADMINISTRATION DEPARTMENT
SECTION-A**

NOTIFICATION

Shimla-2, the 6th June, 2013

No. GAD-A(B)8-4/2001-II.—The Governor, Himachal Pradesh is pleased to declare 23rd June, 2013 (Sunday) as a Gazetted Holiday in 2-Mandi Lok Sabha Constituency on account of Bye Election of 2-Mandi Lok Sabha Constituency, H.P. to enable the employees working in all Govt. Offices/ Boards/ Corporations/ Educational Institutions and Industrial Establishments situated in Himachal Pradesh to exercise their right to franchise. This will also be paid holiday to daily waged employees and also within the meaning of Section- 25 of Negotiable Instrument Act, 1881.

It is, however, clarified that special casual leave may be given to those employees who are working in different places in the State but have right to vote in other constituencies/places in the Pradesh on the production of certificate of the concerned Presiding Officer that the employee has actually cast his/her vote.

By order,
SUDRIPTA ROY,
Chief Secretary,

ब अदालत श्री देवी चन्द ठाकुर, कार्यकारी दण्डाधिकारी, बैजनाथ, जिला कांगड़ा (हिं0 प्र0)

श्री मकौड़ा राम पुत्र श्री शंकर, वासी कनारग, डा० मण्डेहड़, तहसील बैजनाथ, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

प्रार्थना—पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री मकौड़ा राम पुत्र श्री शंकर, वासी कनारग, डा० मण्डेहड़, तहसील बैजनाथ, जिला कांगड़ा, हिमाचल प्रदेश ने इस अदालत में प्रार्थना—पत्र गुजारा है कि उसके पिता की मृत्यु दिनांक 28-2-1998 को मुहाल कनारग में हुई थी परन्तु इस बारे पंचायत के रिकॉर्ड में पंजीकरण नहीं करवाया जा सका। अब पंजीकरण करने के आदेश दिए जाएं।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण के बारे में कोई उजर एतराज हो तो वह दिनांक 17-6-2013 को सुबह 10.00 बजे इस न्यायालय में असालतन या वकालतन हाजिर आकर पेश कर सकता है अन्यथा उपरोक्त मृत्यु का पंजीकरण करने के आदेश दे दिए जाएंगे। उसके उपरान्त कोई एतराज न सुना जाएगा।

आज दिनांक 14-5-2013 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

देवी चन्द ठाकुर,
कार्यकारी दण्डाधिकारी,
बैजनाथ, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश

श्री मेहर चन्द पुत्र श्री चमारू राम, निवासी व डाकघर डटम्ब, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

विषय—प्रार्थना—पत्र शजरा नस्ब में जाति की दरुस्ती करवाने बारे।

श्री मेहर चन्द पुत्र श्री चमारू राम, निवासी व डाकघर डटम्ब, तहसील शाहपुर ने इस कार्यालय में प्रार्थना—पत्र गुजारा है कि मेरी सही जाति गद्दी ब्राह्मण, गौत्र वशिष्ट दर्ज है, परन्तु शजरा नस्ब वर्ष 2008-09 में प्रार्थी की जाति ब्राह्मण, गौत्र वशिष्ट दर्ज है, जोकि गलत है। दरुस्ती की जावे।

अतः इस राजपत्र इश्तहार के माध्यम से आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को कोई उजर व एतराज हो तो वह दिनांक 24-6-2013 को इस कार्यालय में अपना उजर व एतराज पेश कर सकता है। बाद पेशी कोई भी उजर व एतराज नहीं सुना जाएगा तथा प्रार्थी की जाति की दरुस्ती शजरा नस्ब में दरुस्त कर दी जाएगी।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश

श्री सुरिन्दर कुमार पुत्र श्री जगत राम, निवासी व डाकघर चुडथां, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

विषय.—प्रार्थना—पत्र बाबत नाम की दरुस्ती करवाने बारे।

श्री सुरिन्दर कुमार पुत्र श्री जगत राम, निवासी व डाकघर चुडथां, तहसील शाहपुर ने इस कार्यालय में प्रार्थना—पत्र पेश किया है कि मेरा सही नाम सुरिन्दर कुमार है, परन्तु राजस्व अभिलेख में प्रीतम चन्द दर्ज है, जोकि गलत है। दरुस्ती की जावे।

अतः राजपत्र इश्तहार के माध्यम से आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को कोई उजर व एतराज हो तो वह दिनांक 24—6—2013 को पेश कर सकता है। बाद पेशी कोई भी उजर व एतराज नहीं सुना जाएगा तथा प्रार्थी का नाम नियमानुसार राजस्व रिकॉर्ड में दर्ज करने के आदेश दिए जाएंगे।

मोहर।

हस्ताक्षरित/—

सहायक समाहर्ता द्वितीय श्रेणी,
शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

अज अदालत सहायक समाहर्ता द्वितीय श्रेणी, तहसील जोगिन्दरनगर, जिला मण्डी, हिमाचल प्रदेश

मिसल नं० : 42

तारीख मरजुआ : 10—5—2013

तारीख पेशी : 14—6—2013

श्री गोपाल सिंह पुत्र श्री भीखम राम, निवासी त्रैम्बली, तहसील जोगिन्दरनगर, जिला मण्डी, हिमाचल प्रदेश .. प्रार्थी।

बनाम

आम जनता

.. फ्रीकदोयम।

राजस्व अभिलेख मुहाल त्रैम्बली में नाम की दरुस्ती बारा।

श्री गोपाल सिंह पुत्र श्री भीखम राम, निवासी त्रैम्बली, तहसील जोगिन्दरनगर, जिला मण्डी, हिमाचल प्रदेश ने इस न्यायालय में आवेदन—पत्र गुजार कर अनुरोध किया है कि उसका नाम ग्राम पंचायत त्रैम्बली तथा राशन कार्ड में गोपाल सिंह दर्ज है लेकिन प्रार्थी का नाम राजस्व अभिलेख त्रैम्बली में धोबू राम दर्ज है, जोकि गलत दर्ज हुआ है। जिसकी दरुस्ती के आदेश दिए जावें।

अतः सर्वसाधारण जनता को इश्तहार राजपत्र के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी के नाम की दरुस्ती राजस्व अभिलेख मुहाल त्रैम्बली में करने बारा कोई उजर एतराज हो तो वह दिनांक 14—6—2013 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर होकर अपने उजर/एतराज पेश कर सकता है अन्यथा गैर-हाजरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 24—5—2013 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—

सहायक समाहर्ता द्वितीय श्रेणी,
जोगिन्दरनगर, जिला मण्डी, हिमाचल प्रदेश।

अज अदालत सहायक समाहर्ता द्वितीय श्रेणी, तहसील जोगिन्द्रनगर, जिला मण्डी, हिमाचल प्रदेश
मिसल नं० : 43 तारीख मरजुआ : 24-5-2013 तारीख पेशी : 29-6-2013

श्री शेर सिंह पुत्र श्री सुगू निवासी छाड़ग, तहसील जोगिन्द्रनगर, जिला मण्डी, हिमाचल प्रदेश
. . . प्रार्थी ।

बनाम

आम जनता . . . फ्रीकदोयम ।

राजस्व अभिलेख मुहाल छाड़ग में नाम की दरुस्ती बारा ।

श्री शेर सिंह पुत्र श्री सुगू निवासी छाड़ग, तहसील जोगिन्द्रनगर, जिला मण्डी, हिमाचल प्रदेश ने इस न्यायालय में आवेदन-पत्र गुजार कर अनुरोध किया है कि उसका नाम ग्राम पंचायत रोपा पधर, आधार कार्ड तथा राशन कार्ड में शेर सिंह दर्ज है लेकिन प्रार्थी का नाम राजस्व अभिलेख छाड़ग में सेरू दर्ज है, जोकि गलत दर्ज हुआ है। जिसकी दरुस्ती के आदेश दिए जावें।

अतः सर्वसाधारण जनता को इश्तहार राजपत्र के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी के नाम की दरुस्ती राजस्व अभिलेख मुहाल छाड़ग में करने बारा कोई उजर/एतराज हो तो वह दिनांक 29-6-2013 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर होकर अपने उजर/एतराज पेश कर सकता है अन्यथा गैर हाजरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 31-5-2013 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ ।

मोहर ।

हस्ताक्षरित/-
सहायक समाहर्ता द्वितीय श्रेणी,
जोगिन्द्रनगर, जिला मण्डी, हिमाचल प्रदेश ।

अज अदालत सहायक समाहर्ता द्वितीय श्रेणी, तहसील जोगिन्द्रनगर, जिला मण्डी, हिमाचल प्रदेश
मिसल नं० : 41 तारीख मरजुआ : 10-5-2013 तारीख पेशी : 14-6-2013

श्री प्रीतम सिंह पुत्र श्री खजाना राम, निवासी कस रकड़, तहसील जोगिन्द्रनगर, जिला मण्डी, हिमाचल प्रदेश
. . . प्रार्थी ।

बनाम

आम जनता . . . फ्रीकदोयम ।

राजस्व अभिलेख मुहाल कस में नाम की दरुस्ती बारा ।

श्री प्रीतम सिंह पुत्र श्री खजाना राम, निवासी कस रकड़, तहसील जोगिन्द्रनगर, जिला मण्डी, हिमाचल प्रदेश ने इस न्यायालय में आवेदन-पत्र गुजार कर अनुरोध किया है कि उसका नाम बेटे के स्कूल प्रमाण-पत्र में प्रीतम सिंह दर्ज है परन्तु प्रार्थी का नाम राजस्व अभिलेख मुहाल कस में प्रीतम चन्द दर्ज है, जोकि गलत दर्ज हुआ है। जिसकी दरुस्ती के आदेश दिए जावें।

अतः सर्वसाधारण जनता को इश्तहार राजपत्र के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी के नाम की दरुस्ती राजस्व अभिलेख मुहाल कस में प्रीतम सिंह करने बारा कोई उजर एतराज हो तो वह दिनांक 14-6-2013 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर होकर अपने उजर/एतराज पेश कर सकता है अन्यथा गैर-हाजरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 24-5-2013 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ ।

मोहर ।

हस्ताक्षरित/-
सहायक समाहर्ता द्वितीय श्रेणी,
जोगिन्द्रनगर, जिला मण्डी, हिमाचल प्रदेश ।

ब अदालत श्री ठाकुर लाल नेगी, सहायक समाहर्ता द्वितीय वर्ग, नालागढ़, जिला सोलन, हिमाचल प्रदेश

मिसल नं० : 6/13

श्री बाबा राम पुत्र श्री मंगतु राम, साकन गांव कौलांवाला, परगना पलासी, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश।

बनाम

आम जनता

दरख्वास्त दरुस्ती नाम।

हर आम व खास को सूचित किया जाता है कि श्री बाबा राम पुत्र श्री मंगतु राम, साकन गांव कौलांवाला, परगना पलासी, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश ने इस न्यायालय में दरख्वास्त नाम दरुस्ती प्रस्तुत की है जिसमें आवेदक ने अपना नाम बाबु राम को दरुस्त करके बाबा राम उर्फ बाबु राम करने वारे आवेदन किया है। अगर इस नाम की दरुस्ती वारे किसी को भी एतराज हो तो वह अपनी आपत्ति इस न्यायालय को दिनांक 17-6-2013 से पूर्व असालतन या वकालतन प्रस्तुत कर सकता है। बाद गुजरने मियाद एतराज काबले समायत नहीं होगा तथा आदेश दरुस्ती नाम जारी कर दिए जाएंगे।

आज दिनांक 18-5-2013 को हमारे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

ठाकुर लाल नेगी,
सहायक समाहर्ता द्वितीय वर्ग,
नालागढ़, जिला सोलन, हिमाचल प्रदेश।

ब अदालत श्री टी० एल० नेगी, सहायक समाहर्ता द्वितीय वर्ग, नालागढ़, जिला सोलन, हिमाचल प्रदेश
मिसल नं० : 7/13

श्री तारू राम पुत्र श्री छोटू राम पुत्र श्री छज्जू राम, साकन गांव नंगल ढक्का, परगना गुल्लरवाला, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश।

बनाम

आम जनता

दरख्वास्त दरुस्ती नाम।

हर आम व खास को सूचित किया जाता है कि श्री तारू राम पुत्र श्री छोटू राम पुत्र श्री छज्जू राम, साकन गांव नंगल ढक्का, परगना गुल्लरवाला, तहसील नालागढ़, जिला सोलन, हिमाचल प्रदेश ने इस न्यायालय में दरख्वास्त प्रस्तुत की है जिसमें आवेदक ने अपने नाम को दरुस्त करके तारू उर्फ तारा चन्द करने वारे आवेदन किया है। अगर इस नाम की दरुस्ती वारे किसी को कोई भी एतराज हो तो वह अपनी

आपति इस न्यायालय को दिनांक 29-6-2013 से पूर्व असालतन या वकालतन प्रस्तुत कर सकता है। बाद गुजरने मियाद एतराज काबले समायत नहीं होगा तथा आदेश दरुस्ती नाम जारी कर दिए जाएंगे।

आज दिनांक 30-5-2013 को हमारे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

ठाकुर लाल नेगी,
सहायक समाहर्ता द्वितीय वर्ग,
नालागढ़, जिला सोलन, हिमाचल प्रदेश।

विधि विभाग

अधिसूचना

शिमला-2, 5 जून, 2013

संख्या एल0एल0आर0-डी0(6)-20/2013-लेज.—हिमाचल प्रदेश की राज्यपाल, भारत के संविधान के अनुच्छेद 200 के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 3-6-2012 को अनुमोदित हिमाचल प्रदेश प्राइवेट विलनिकल स्थापन (रजिस्ट्रीकरण और विनियमन) निरसन विधेयक, 2013 (2013 का विधेयक संख्यांक 19) को वर्ष 2013 के अधिनियम संख्यांक 40 के रूप में संविधान के अनुच्छेद 348 (3) के अधीन उसके अंग्रेजी प्राधिकृत पाठ सहित हिमाचल प्रदेश ई-राजपत्र में प्रकाशित करती हैं।

आदेश द्वारा,
चिराग भानू सिंह,
सचिव (विधि)।

हिमाचल प्रदेश प्राइवेट विलनिकल स्थापन (रजिस्ट्रीकरण और विनियमन) निरसन अधिनियम, 2013

धाराओं का नाम

धारा :

- संक्षिप्त नाम।
- 2007 के अधिनियम संख्यांक 13 का निरसन और व्यावृत्तियां।

2013 का अधिनियम संख्यांक 40

हिमाचल प्रदेश प्राइवेट विलनिकल स्थापन (रजिस्ट्रीकरण और विनियमन) निरसन अधिनियम, 2013

(राज्यपाल महोदया द्वारा तारीख 3 जून, 2013 को यथाअनुमोदित)

हिमाचल प्रदेश प्राइवेट विलनिकल स्थापन (रजिस्ट्रीकरण और विनियमन) अधिनियम, 2007 (2007 का अधिनियम संख्यांक 13) का निरसन करने के लिए अधिनियम।

भारत गणराज्य के चौंसठवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित हो :—

1. **संक्षिप्त नाम**—इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश प्राइवेट विलनिकल स्थापन (रजिस्ट्रीकरण और विनियमन) निरसन अधिनियम, 2013 है।

2. 2007 के अधिनियम संख्यांक 13 का निरसन और व्यावृत्तियां—हिमाचल प्रदेश प्राइवेट विलनिकल स्थापन (रजिस्ट्रीकरण और विनियमन) अधिनियम, 2007 का एतदद्वारा निरसन किया जाता है :

परन्तु ऐसा निरसन निम्नलिखित को प्रभावित नहीं करेगा,—

(क) उक्त अधिनियम के अधीन अर्जित, प्रोद्भूत या उपगत किसी अधिकार, विशेषाधिकार, बाध्यता या दायित्व, या

(ख) उक्त अधिनियम के अधीन किए गए किसी अपराध के सम्बन्ध में उपगत किसी शास्ति, समपहरण या दण्ड, या

(ग) यथापूर्वोक्त ऐसे किसी अधिकार, विशेषाधिकार, बाध्यता, दायित्व, शास्ति, समपहरण या दण्ड की बाबत किसी अन्वेषण, विधिक कार्यवाही या उपचार, और

ऐसा कोई अन्वेषण, विधिक कार्यवाहियां या उपचार संस्थित, चालू या प्रवर्तनशील रखा जा सकेगा और ऐसी कोई शास्ति, समपहरण या दण्ड अधिरोपित किया जा सकेगा, मानो उक्त अधिनियम के उपबन्ध निरसित न किए गए हों :

परन्तु यह और कि इस प्रकार निरसित अधिनियम के अधीन की गई कोई नियुक्ति या किया गया प्रत्यायोजन, जारी की गई अधिसूचना, किया गया आदेश या जारी किए गए निदेश, बनाया गया नियम, किया गया रजिस्ट्रीकरण, प्रदान की गई कोई अनुज्ञाप्ति, अधिरोपित की गई अनुज्ञाप्ति फीस या कोई अन्य फीस सहित, की गई कोई बात या कार्रवाई, जहां तक कि यह नैदानिक स्थापन (रजिस्ट्रीकरण और विनियमन) अधिनियम, 2010 (2010 का अधिनियम संख्यांक 23) के उपबन्धों से असंगत न हो, ऐसे की गई समझी जाएगी, मानो हिमाचल प्रदेश प्राइवेट विलनिकल स्थापन (रजिस्ट्रीकरण और विनियमन) अधिनियम, 2007 (2007 का अधिनियम संख्यांक 13) निरसित न किया गया हो और ऐसी कोई नियुक्ति, प्रत्यायोजन, अधिसूचना, आदेश, निदेश, नियम, रजिस्ट्रीकरण, अनुज्ञाप्ति, शुल्क, अनुज्ञाप्ति फीस या अन्य फीस तब तक प्रवृत्त बनी रहेगी जब तक तदनुसार अतिष्ठित न कर दी जाए।

AUTHORITATIVE ENGLISH TEXT

THE HIMACHAL PRADESH PRIVATE CLINICAL ESTABLISHMENTS (REGISTRATION AND REGULATION) REPEAL ACT, 2013

ARRANGEMENT OF SECTIONS

Sections :

1. Short title.
2. Repeal of Act No. 13 of 2007 and savings.

**THE HIMACHAL PRADESH PRIVATE CLINICAL ESTABLISHMENTS
(REGISTRATION AND REGULATION) REPEAL ACT, 2013**

(AS ASSENTED TO BY THE GOVERNOR ON 3RD JUNE, 2013)

AN

ACT

to repeal the Himachal Pradesh Private Clinical Establishments (Registration and Regulation) Act, 2007(Act No. 13 of 2007).

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Sixty-fourth Year of the Republic of India as follows :—

1. Short title.—This Act may be called the Himachal Pradesh Private Clinical Establishments (Registration and Regulation) Repeal Act, 2013.

2. Repeal of Act No. 13 of 2007 and savings.—The Himachal Pradesh Private Clinical Establishments (Registration and Regulation) Act, 2007 is hereby repealed:

Provided that such repeal shall not affect,—

- (a) any right, privilege, obligation or liability acquired, accrued or incurred under the said Act; or
- (b) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Act; or
- (c) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and

any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the provisions of the said Act had not been repealed :

Provided further that anything done or any action taken, including any appointment or delegation made, notification, order, or directions issued, rule made, registration made, license granted, license fee or any other fee imposed, under the Act so repealed shall, in so far as it is not inconsistent with the provisions of the Clinical Establishments (Registration and Regulation) Act, 2010 (Act No. 23 of 2010), be deemed to have been done or taken as if the Himachal Pradesh Private Clinical Establishments (Registration and Regulation) Act, 2007 (Act No.13 of 2007) had not been repealed and any such appointment, delegation, notification, order, direction, rules, registration, license, duty, license fee or other fee shall continue to be in force accordingly until suspended.

